EXHIBIT 7

TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

DUKE ENERGY PROGRESS, LLC DBA DUKE ENERGY

AND

[redacted]

DATED

February 1, 2018

[Effective Date]

TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT

This **TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT** ("Agreement") is made and entered into this 1st day of February, 2018 ("Effective Date") by and between Duke Energy Progress, LLC DBA Duke Energy ("Licensor"), and _____ ("Licensee"). Licensor and Licensee may be referred to hereafter individually as a "Party" and collectively as the "Parties." The attached Terms and Conditions and all associated Exhibits are incorporated herein and made a part of this Agreement by this reference.

Purpose. The purpose of this Agreement is to establish terms and conditions for Licensee to install and maintain Attachments (except for Wireless Attachments) in accordance with this Agreement on Licensor's electric Distribution Poles and Drop/Lift Poles within Licensor's _____ Service Area for the sole and limited purpose of providing telecommunications services, either standing alone or in conjunction with other communications services.

THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES, AND DOES NOT PERMIT ACCESS TO OR AFFIXING OF ATTACHMENTS TO TRANSMISSION TOWERS, STRUCTURES OR OTHER TRANSMISSION FACILITIES OR ANY OTHER PROPERTY OR FACILITIES OF LICENSOR.

Term of Agreement. The initial term of this Agreement is five (5) years from the Effective Date (if not terminated pursuant to the terms of this Agreement sooner) ("Initial Term"), and thereafter shall automatically be renewed from year to year ("Renewal Periods), unless terminated by either Party by giving written notice of its intention to terminate at least sixty (60) days prior to the end of the Initial Term or any Renewal Period. Upon termination of this Agreement, Licensee's Attachments shall be removed in accordance with Section 17.

Schedule of Fees.[1]

Pole Attachment License Fee.	$ 7.24 per Attachment per year.
Safety Violation Fee.	$50.00 per Attachment.
Unauthorized Attachment Fee.	$70.00 per Unauthorized Attachment.

[1] As used in this Schedule of Fees, Attachment has the same meaning as that appearing in the Terms and Conditions, Definitions, at Paragraph 1.2.

Notices. The mailing addresses and, telephone numbers, and electronic addresses of the Parties are as follows:

Licensor:

Duke Energy Progress
410 S Wilmington St

Raleigh, NC 27601

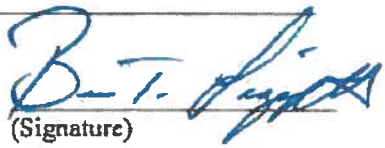
Telephone : _____
E-Mail :
_____@duke-energy.com

Licensee:

[redacted]

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however,* that this Agreement shall not become effective as to either Party until executed by both Parties.

LICENSOR

By: 
(Signature)

Title: GM Operational Services

Print Name: Brian T. Liggett

Date: 2-1-18

LICENSEE

By: [redacted]
(Signature)

Title: [redacted]

Print Name: [redacted]

Date: Jan 4, 2018

Table of Contents

EXHIBITS

TERMS AND CONDITIONS

1. DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

1.1 Application. In Licensor's discretion, either the Pole Attachment Request Form attached hereto as Exhibit A, or the Pole Attachment application spreadsheet used as part of the Joint Use Request (JUR) electronic notification system. An Application must be completed by Licensee and approved by Licensor in writing in order for Licensee to attach to or make use of any of Licensor's Poles under this Agreement. Licensor may revise either Application from time to time in its sole discretion.

1.2 Attached Pole. A Pole owned or maintained by Licensor that contains at least one Attachment by Licensee.

1.3 Attachment. Attachment shall mean: (a) any contact on a pole to accommodate a single messenger strand (support wire) system, with or without communication cable(s) lashed to it (any additional contact(s) required for additional messenger strand systems shall be considered as separate Attachments); (b) any service drop affixed to a pole with a j-hook or other similar hardware (except that (i) multiple service drops attached to a single lift (drop) pole and positioned in close proximity to one another shall be considered as one Attachment for billing purposes, and (ii) a service drop affixed to a pole within six inches (6") above or below a through bolt shall not count as an additional Attachment for billing purposes); and (c) any other appurtenance affixed to a pole not herein defined, with the exception of guy and ground wires.

1.4 Authorization. Licensor's grant of nonexclusive authority to Licensee to affix its Attachments to Licensor's Poles in accordance with the terms of this Agreement.

1.5 Authorized Attachment. An Attachment for which Authorization has been obtained.

1.6 Business Day. All days except Saturday, Sunday and officially recognized Federal legal holidays.

1.7 Capital Tree Trimming. Any clearing or re-clearing of new or existing rights-of-way or easements recorded as a capital expenditure by Licensor in accordance with the classification of accounts as required by the Federal Energy Regulatory Commission or the state utility commission.

1.8 Control. With respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.

1.9 Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.

1.10 Distribution Pole. A pole owned by Licensor and bearing electric lines that have a voltage rating no higher than __ kV but not including any pole, post or standard used exclusively for street or outdoor lighting.

1.11 Drop/Lift Pole. An ancillary pole owned by Licensor and necessary to provide clearance or to extend service from a Distribution Pole (or from Licensee's facilities attached to a Distribution Pole) to an individual customer(s).

1.12 Licensee's Service Area. The area within the state authorized in this Agreement in which Licensee does or plans to provide its Services.

1.13 Licensor Practices. Licensor's rules and practices for Attachments as set forth in Exhibit D attached hereto.

1.14 Make Ready Costs. All costs necessary for Licensor to perform the Make Ready Work and prepare its Poles for Licensee's Attachments, including but not limited to the costs of materials and equipment, fully loaded direct and indirect labor, engineering, supervision, and overhead. Engineering includes design, pole loading studies, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 3.4 hereto. Also included are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of Capital Tree Trimming associated with the Make Ready Work required hereunder, installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 3.4.

1.15 Make Ready Estimate. The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Poles for attachment by Licensee.

1.16 Make Ready Work. All work required by Licensor to prepare Licensor's Poles for attachment by Licensee, except for any necessary rearrangement of third party facilities.

1.17 Overlashing. The practice whereby an entity, whether the Licensee or a third party, physically ties or otherwise connects or attaches new wiring or facilities to wiring or to support strands or hardware that already has been affixed to a Pole.

1.18 Pole. Any Distribution Pole or Drop/Lift Pole, which does not include any post, pole or standard used primarily for lighting.

1.19 Pole Attachment License Fee. The annual amount per Attachment that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Poles.

1.20 Required Authorizations. All legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties to install, erect, operate or maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, rights-of-way, and certificates of convenience and necessity.

1.21 Safety Violation. Any Attachment that fails to comply with the technical requirements and specifications listed in Section 3.4.

1.22 Security Instrument. A cash deposit or irrevocable letter of credit to be used by Licensee to guarantee Licensee's payment in full of all Attachment Fees and other amounts payable to Licensor under this Agreement, including potential costs incurred by Licensor to remove Licensee's Attachments. The Security Instrument shall be in an amount to be determined and in the form shown in accordance with Exhibit C attached hereto, as the same may be modified from time to time by Licensor in its sole discretion.

1.23 Services. The telecommunications services and other communications services provided by Licensee.

1.24 Term. The period during which this Agreement remains in effect.

1.25 Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor wherever located, including Poles, and Licensee-owned facilities overlashed or attached to the attachments of any other attaching entity that has not been authorized by Licensor as required by this Agreement or any predecessor agreement.

1.26 Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment.

2. LICENSOR OBLIGATIONS

2.1 Diligence and Good Faith. Licensor shall in good faith diligently pursue all reasonable measures to accommodate Licensee's Authorized Attachments. Notwithstanding the foregoing, Licensor specifically reserves the right in its sole judgment, to deny access to any Distribution Pole, facility, property, conduit or right of way where there is or may be insufficient capacity, and for reasons of safety, reliability and generally applicable engineering purposes. Licensor reserves the right to deny access to any Transmission Pole for any reason, or no reason at all.

2.2 Non Disturbance. Provided that Licensee is performing in accordance with all terms and conditions of this Agreement, Licensor shall not intentionally disturb Licensee's Authorized Attachments, except as such disturbance may be necessary in a safety, emergency or natural disaster situation, as determined in Licensor's sole judgment. Licensor shall make commercially reasonable efforts to notify Licensee prior to any planned or intentional disturbance of Licensee's facilities.

2.3 Maintenance of Attached Poles. At its expense, Licensor shall maintain the Attached Poles and replace, reinforce or repair such poles as necessary, in Licensor's sole judgment.

3. LICENSEE OBLIGATIONS

3.1 Use of Attachments. Licensee shall use each of the Attachments solely to provide telecommunications services, either standing alone or in conjunction with other communication services, and not for any other purpose. This Agreement does not authorize Licensee to make Wireless Attachments or to make or use an Attachment or Licensor's Poles, rights of way, property or facilities for any wireless device or equipment including: any transmitter, receiver, antenna, camera, optical emitter or sensor or listening device. Except as expressly provided in this Agreement, Licensee shall not acquire attachment rights for or on behalf of any third party. Licensee shall not authorize any third party to affix any cables, strand, wires, or other facilities, or antennas, transmitters, receivers and/or associated equipment on the Poles. Licensee shall not allow any third party to lease, Overlash, or otherwise use any Attachments or Poles that Licensee itself is not using to provide the Services.

3.2 Licensee's Service Area. Licensee agrees to maintain accurate, up-to-date location maps and records of all its Attachments on Licensor's Poles. Licensor shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during the regular business hours with reasonable notice.

3.3 Compliance with Applicable Rules. Licensee shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Poles, including any local zoning restrictions.

3.4 Technical Requirements and Specifications.

(a) At its own expense, Licensee shall erect, install, maintain, and relocate when necessary the Attachments in a workmanlike manner that is not unsightly and is in safe condition and good repair, all as determined by Licensor, in accordance with all applicable technical requirements and specifications, including, but not limited to:

(i) requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), the federal Occupational Safety and Health Act ("Federal OSHA"), the applicable state Occupational Safety and Health Act ("State OSHA"), and the applicable state Department of Transportation ("DOT"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, Federal OSHA, State OSHA or DOT requirements and specifications;

(ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, Federal OSHA, State OSHA and DOT;

(iii) Exhibit D including current requirements of Licensor, and as may be amended or revised. *Drawings 10.02-01, 10.02-03, 10.07-03, 10.07-05, 10.07-07, 10.07-11 and 10.07-15* are incorporated herein, and unless otherwise specified by Licensor, describe minimum construction requirements for Attachments.

(iv) any safety precautions specified by Licensor;

(v) any current or future rules or orders of any federal, state or local authority having jurisdiction;

(vi) Telcordia's Blue Book Manual of Construction Procedures; and

(vii) any requirements that applicable property owners may prescribe.

(b) Licensee shall bring into conformity as soon as practical following notice by Licensor, and no later than any reasonable date set by Licensor, any existing Authorized Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall promptly reimburse Licensor for all costs related thereto, plus an additional 50% of such costs. Failure by Licensor to inspect or determine Licensee's conformance to the technical requirements and specifications listed in this section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.

(c) The Licensor Practices may be amended, with a copy of such amendments being provided to Licensee, from time to time by Licensor as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including Poles, without resort to the provisions of Section 19 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit D, Licensee shall make all required modifications within thirty (30) days

after receipt of notice thereof from Licensor or within such other period of time that Licensor may specify.

3.5 Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all Poles to be accessed or climbed by its employees, agents, contractors or subcontractors or upon which Licensee's attachments are to be affixed, and shall notify Licensor within five (5) days of any dangerous conditions determined to be existing on any such Poles. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, including exposure to any radiofrequency or electromagnetic fields.

3.6 Safety Precautions. Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments, and to avoid interference to other attaching entities and Licensor's safe, reliable and efficient operation of its electric distribution system. Should any such injury, damage or interference occur despite such steps, Licensee shall promptly notify Licensor within twenty-four (24) hours of such injury, damage or interference. At Licensor's option, Licensee shall either: (i) repair such damage and/or resolve such interference within the time specified by Licensor; or (ii) compensate Licensor for the cost of repairing any such damage and/or resolving such interference. Licensee also shall indemnify Licensor for such injury, damage or interference as provided in Section 12.1.

3.7 Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install, maintain or operate the Attachments have received all required training with respect to work on Poles with energized electric systems and wired and wireless communications systems. Such training shall include, but not be limited to, electrical and radiofrequency emissions safety and fall protection. Licensee shall produce proof of such training upon request by Licensor.

3.8 Identification Markers.

(a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Pole, and must:

(i) be non-conductive;
(ii) be of a distinctive and uniform design, approved in advance by Licensor
(iii) not be mounted directly to the pole;
(iv) provide Licensee contact information that includes a phone number that Licensee monitors 24 hours per day, seven days per week;
(v) be legible, clearly visible and recognizable by color or other distinction from the ground; and
(vi) show Licensee's name or insignia while making clear that Licensee is not the owner of the pole.

Licensor reserves the right to specify the type, color and nature of such identification markers to comport with a local or regional plan for identifying attaching entities.

(b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can otherwise identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent

identification markers on those Attachments. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall promptly reimburse Licensor for all costs related thereto, plus an additional 50%.

3.9 Notification of Attachments. When requested by Licensor, Licensee shall provide Licensor with the precise location, routes, and total number of Licensee's Attachments.

4. MUTUAL OBLIGATIONS

4.1 Prevention of Damage. Each Party shall take all reasonable precautions to avoid damaging the facilities of the other.

4.2 Easements; Access to Poles. Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY, EASEMENTS, ENCROACHMENTS, OTHER PROPERTY RIGHTS, OR PERMISSIVE USE OR ACCESS ENTITLE LICENSEE TO: (I) ACCESS THE PROPERTY UNDERLYING LICENSOR'S POLES; (II) INSTALL, OPERATE OR MAINTAIN LICENSEE'S FACILITIES OR ATTACHMENTS; OR (III) PROVIDE LICENSEE'S SERVICES. This Agreement does not license or assign the use of any Licensor real property rights to Licensee, including but not limited to easements and rights-of-way. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Poles because Licensee failed to obtain appropriate rights-of-way or easements. Consistent with Section 11.2, Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. If otherwise consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee to access Licensor's Poles, to the extent it may lawfully do so. Further, Licensee's use of Licensor's Poles and its overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state and local laws and regulations.

5. ESTABLISHING ATTACHMENT TO POLES

5.1 Pole Attachment Application. Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall: (a) submit to Licensor an Application requesting Licensor's permission to attach to or make use of each such pole; (b) receive written approval from Licensor authorizing the Attachment(s) to or use of each such pole; (c) pay the Make Ready Costs specified in this Section 5; and (d) (e) comply with all procedures set forth in this Section 5. An Application is required anytime Licensee seeks to add new Attachments, or expand or otherwise modify existing Attachments. A maximum of 40 Licensor's poles identified for proposed attachment per application. No more than 300 poles shall be submitted in any calendar month. Any Attachment for which Licensee has not complied with these procedures shall be deemed an Unauthorized Attachment. Licensee shall not acquire attachment rights for or on behalf of any Affiliate or other third party and, shall not authorize any Affiliate or third party to affix any cables, strand, wires, or other facilities on the Poles. Licensee shall not allow any Affiliate or third party to lease, or otherwise use any Attachment or Poles that Licensee itself is not using to provide the Services.

5.2 Decision Regarding Application. Licensor may reject all or part of an Application or limit the number and character of Attachments on any Pole if, in the sole judgment of Licensor, any Attachment proposed in the Application is undesirable or impracticable because of capacity, safety, reliability or engineering concerns. Such concerns may include, without limitation: (i) overloading of Licensor's structures; (ii)

interference with Licensor's facilities and the facilities of other attaching entities; (iii) any compromise of safety or reliability; and (iv) any violation of engineering standards. Within forty-five (45) days after the receipt of such Application, Licensor shall notify Licensee in writing whether the Application is approved, approved with modifications, or rejected. If Licensor rejects all or part of Licensee's Application because of capacity concerns, Licensee may request Licensor to replace, at Licensee's sole expense, any affected Pole(s) with a taller or stronger pole(s) that will accommodate Licensee's attachment(s). Licensor, in its sole discretion, may replace any affected Poles to accommodate Licensee's attachments.

5.3 Make Ready Procedures.

(a) Make Ready Costs include, without limitation, the cost of performing an engineering survey of Licensor's Poles to determine if the Poles are suitable for attachment ("Engineering Survey"). Licensor may bill Licensee the greater of the costs of conducting the Engineering Survey or a minimum fee of $70.00 per Application.

(b) If additional Make Ready Work is required, Licensor may in its sole discretion, on the basis of the Application and associated construction plans and drawings, submit to Licensee a Make Ready Estimate for all Make Ready Work which may be required for each Pole. The Make Ready Estimate shall be based on Licensor's standard work estimating methods, which shall follow generally accepted estimating principles and include items such as materials less salvage, labor, engineering, supervision, quality assurance and overhead. The Make Ready Estimate shall be provided using the applicable Application Form identified in Exhibit A.

(c) Upon notice pursuant to Exhibit A that the Make Ready Estimate has been accepted and paid by Licensee, Licensor shall proceed with the additional Make Ready Work covered by the Make Ready Estimate, except to the extent that Licensee is permitted or required to contract directly with an approved contractor or engineering firm for Make Ready Work as provided in this Section 5.3. Licensor shall undertake commercially reasonable efforts to complete such Make Ready Work by the estimated completion date but does not guarantee completion by such date.

(d) All Make Ready Work shall be performed by Licensor or one of Licensor's contractors, except that Licensor may, in its sole discretion, permit or require Licensee to contract directly with a high voltage electrical contractor and/or engineering design firm approved by Licensor. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work.

(e) In the event Licensor tracks the actual cost of the Make Ready Work associated with the Make Ready Estimate, then upon completion of the associated Make Ready Work, Licensor shall send to Licensee an invoice for the Make Ready Costs less any amount of the Make Ready Estimate previously paid by Licensee. Licensee must reimburse Licensor for any unpaid Make Ready Costs within thirty (30) days of the receipt of Licensor's invoice. Licensee's continuing Authorization to use the Poles is contingent upon timely payment of Make Ready Costs. If the tracked, actual Make Ready Costs are less than the Make Ready Estimate, Licensor shall refund the difference to Licensee within thirty (30) days after the total cost of the project has been determined.

5.4 Coordination with Third Parties.

(a) If rearrangement or relocation of third party facilities is necessary to accommodate Licensee's Attachments, Licensee must negotiate separately with each third party for such rearrangement or relocation. Licensee shall notify each third party attached to the affected Poles of Licensee's proposed Attachments and, if necessary, negotiate with such third party(ies) to establish clearances between its facilities and those of Licensor and such other party(ies). Licensee shall reimburse the third party(ies) for any expense incurred by them in transferring or rearranging facilities to accommodate Licensee's Attachments.

(b) Licensee shall negotiate with third parties with respect to any relocation or modification of Licensee's facilities that may be required by third party attachments requested subsequent to Licensee's Attachments. Licensor shall not be liable for any costs for the relocation or modification of Licensee's Attachments or facilities that may be required by any third party.

(c) Licensee shall use the applicable notification system designated by Licensor to notify, monitor, and update the status of work associated with Licensee's relocation needs. Licensee shall respond timely to all notifications of work to be done by Licensee.

5.5 Drop/Lift Poles. Unless Licensor otherwise consents in writing, Licensee may not attach to Drop/Lift Poles without prior written approval from Licensor. If Licensor so consents, then Licensee may attach to Drop/Lift Poles without prior written approval subject to the following conditions:

(a) The Drop/Lift Pole Attachments do not require Make Ready Work to be performed;

(b) Within ten (10) days from the date of such Drop/Lift Pole Attachment, Licensee shall submit an Application for such Attachment;

(c) Except as otherwise specified in this Section 5.5, Licensee's Drop/Lift Pole Attachments shall be subject to all other covenants, representations and warranties in this Agreement applicable to Attachments; and

(d) Any Drop/Lift Pole Attachment for which Licensee fails to follow these procedures shall be deemed an Unauthorized Attachment.

5.6 Overlashing. Licensee may Overlash existing Authorized Attachments under the following conditions:

(a) Licensee shall provide advance notification, by use of Exhibit A, of each proposed overlash consisting of a list of pole numbers and accompanying map. Licensor shall have fifteen (15) days after receipt of such notice to perform any required engineering analysis and notify Licensee if any Make Ready Work and/or third-party rearrangement is required for the proposed overlash. Licensee shall not proceed with overlash until any necessary Make Ready Work and/or third-party rearrangement is completed. In the event a proposed overlash requires Make Ready work, Licensor will exercise reasonable diligence to complete any necessary Make Ready Work within sixty (60) days;

(b) Any third party Overlashing shall be installed, operated and maintained by Licensee or its agents, contractors or subcontractors. For all purposes under this Agreement, any third party Overlashing shall be treated as the Overlashing of Licensee;

(c) Licensee shall not allow the third party on whose behalf any third party Overlashing is to

be performed to access the Poles unless the third party has obtained Licensor's written permission for such access;

(d) Except as otherwise specified in this Section 5.6, Licensee's Overlashing shall be subject to all other covenants, representations and warranties in this Agreement applicable to Attachments; and,

(d) Any Overlashing for which Licensee fails to follow these procedures shall be deemed to be an Unauthorized Attachment.

6. PAYMENT PROVISIONS

6.1. Pole Attachment License Fee. Licensee shall pay to Licensor, for each Attachment under this Agreement, the Pole Attachment License Fee. Beginning January 1, 2018 the Pole Attachment License Fee shall be the amount specified in the Schedule of Fees to this Agreement. Thereafter, Licensor may modify the Pole Attachment License Fee no more than once every twelve (12) months to reflect any Pole Attachment License Fee: (i) allowable under federal statutes and the rules and regulations of the FCC; (ii) allowable by any state regulatory commission with pole attachment jurisdiction; or (iii) that are negotiated by the Parties.

6.2. Payment of Pole Attachment License Fee. The Pole Attachment License Fees shall be paid in advance in annual payments as of (i) January 1, based upon the number of Attachments of Licensee as of the immediately preceding December 1. To calculate each annual payment, the relevant number of Attachments shall be multiplied by the applicable Pole Attachment License Fee. Licensor shall invoice Licensee for the Pole Attachment License Fee applicable to those Attachments within thirty (30) days of the first day of December. Licensor's failure to timely invoice Licensee shall not relieve Licensee of the obligation to pay the Pole Attachment License Fee. For Attachments that are authorized during any part of the annual rental period, the Pole Attachment License Fee will be prorated based on the current billing cycle. Prorated license fees will be invoiced and paid with the nnual rental period. Any removals will be reflected on the next billing invoice, but no refund of Pole Attachment Licensee Fees will be made on account of a removal request.

6.3 Payment Period. Unless otherwise specified in this Agreement, all amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of one and one half percent (1.5%), or the maximum amount allowed by law if less than 1.5%, on the unpaid balance of delinquent bills for each month or part thereof until paid. Partial payment shall be applied first to payment of accrued late fees. Licensee shall be entitled to take all steps necessary to cure any Defaults in non-payment of any amounts due from Licensee for a period of ten (10) days following receipt of written notice from Licensor. If such amounts are not paid within such cure period the provisions of Section 16.1 shall apply.

6.4 Fee Disputes. Licensee shall continue payment of all fees and charges when due and performance of all obligations under this Agreement during any period of controversy or claim arising out of, or relating to, this Agreement or its breach. Upon the resolution of any controversy or claim not subject to further appeal, which resolution requires the refund of any fees and charges paid by Licensee during the period of controversy, Licensor shall promptly refund such amounts with an interest rate of one and one half percent (1.5%), or the maximum amount allowed by law if less than 1.5%.

6.5 Fee Increases. Licensor, in its sole discretion, may increase all fees that are due and payable under this Agreement, except the Pole Attachment License Fee, no more than once every 12 months to reflect

increases in the "Consumer Price Index for All Urban Consumers" that have occurred since the Effective Date. Licensor shall provide at least sixty (60) days notice to Licensee before the effective date of any such increase in fees.

6.6 Security. Licensee shall furnish a Security Instrument pursuant to Section 1.21 of this Agreement. No Authorization for any Attachments will be granted to Licensee until the Security Instrument required by this section is received by Licensor.

6.7 Power Supplies. Any electricity that Licensee requires to power its system shall be supplied by Licensor in accordance with rates on file with the state regulatory authority and Licensor's application process.

7. INSPECTIONS

7.1 Right to Conduct. Licensor may conduct inspections from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 3.4, provided that such inspections shall not damage or otherwise interfere with Licensee's equipment or operations. Licensor. If practicable, as reasonably determined in Licensor's sole judgment, Licensor will (i) provide ten (10) days' notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections, and (ii) Licensee's entire system is inspected no more frequently than once per year unless, in Licensor's sole determination, more frequent inspections are necessary for reasons involving safety of persons or protection of property. Inspections may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor.

7.2 Safety Violations. If during inspection or otherwise Licensor determines that a Safety Violation exists with respect to any of Licensee's Attachments, Licensee shall, upon notice by Licensor, correct such Safety Violation within thirty (30) days of notification, unless in Licensor's sole judgment, safety considerations require Licensee to take corrective action within a shorter period. If multiple Safety Violations are identified in the notice, Licensor may establish a schedule specifying the dates by which Licensee must correct those violations. Should Licensee fail to correct one or more such Safety Violations within the time specified, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for the costs incurred by Licensor plus an additional 50% of such costs. Licensor shall not be liable for any loss or damage to Licensee's facilities that may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements. If one or more Safety Violations are not corrected by Licensor or Licensee within the time specified, Licensee shall pay a Safety Violation Fee for each such Safety Violation. A single Attachment with multiple Safety Violations will be assessed as one Safety Violation for the purpose of determining the Safety Violation Fee. An additional Safety Violation Fee may be assessed on any Safety Violation for each additional sixty (60) day period or portion thereof during which the Safety Violation remains uncorrected following the date such Safety Violation is to be corrected according to this Section.

8. INVENTORY

8.1 Right to Conduct Inventory. Licensor may conduct an inventory of Licensee's Attachments to verify the number of Licensee's Attachments. Licensor shall provide thirty (30) days notice of any such inventory so that Licensee may be present and observe such inventory. Inventories may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor as specified in such notice. Any such inventory may be conducted no more than once every five (5) years, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case

Licensor may inventory as frequently as is necessary in its sole discretion. Licensee shall reimburse Licensor for all costs and expenses of conducting inventories to the extent that such expenses are attributable to Licensee's Attachments, including Unauthorized Attachments. Licensee shall make available to Licensor all of its relevant maps and records for any such inventory. This inventory shall not relieve Licensee of any responsibility, obligation or liability under this Agreement.

8.2 Field Inventory True-Up. If Licensor obtains a field inventory of the facilities of Licensee in accordance with Section 8.1 and finds that the total number of Attachments is greater than the number of Authorized Attachments, then upon completion of such inventory, Licensor's attachment record will be adjusted accordingly and subsequent billing will be based on the actual number of Attachments. Retroactive billing will be prorated from the date of the previous field inventory or the effective date of this Agreement, whichever is more recent, based on the current Pole Attachment License Fee plus interest at the rate charged by the IRS for underpayment of Income Taxes. In no event will retroactive billing be for a period of more than five (5) years. In addition, should the field inventory reveal that the Licensee has made Unauthorized Attachments, Licensee will be charged an Unauthorized Attachment Fee as specified in Section 9.1 The payment by Licensee of the Unauthorized Attachment Fee shall not serve to waive Licensor's right to terminate this Agreement under Section 17.

9. UNAUTHORIZED ATTACHMENTS

9.1 Unauthorized Attachment Fee. Within thirty (30) days of notification of each Unauthorized Attachment, Licensee shall pay to Licensor the one-time Unauthorized Attachment Fee as stated in Schedule of Fees for each Unauthorized Attachment. Within such 30-day period, Licensee either must submit documentation that the Attachment had been approved, remove the Unauthorized Attachment or submit an Application for approval of the Attachment. The Unauthorized Attachment Fee shall be in addition to the Attachment Fees due and payable for the Unauthorized Period (as in hereafter defined). The Parties shall attempt to mutually determine the length of time the Unauthorized Attachment existed ("Unauthorized Period"), but if the parties cannot agree to the length of time that the Unauthorized Attachment existed, the Unauthorized Period shall be the shorter of: (i) time period since the last inventory of Licensee's Attachments; or (ii) five (5) years . Should Licensee fail to comply with any of these requirements, Licensor may demand that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability and Licensee shall be liable to Licensor for the cost associated with the removal, plus 50%. Nothing herein shall act to limit any other applicable remedies, including a remedy for trespass, that may be available to Licensor as a result of any Unauthorized Attachment.

9.2 Licensor Failure to Act. No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify, approve or license the Unauthorized Attachment. If an Application for such Attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

10. REPLACEMENT, RELOCATION, REMOVAL AND ABANDONMENT OF POLES; REARRANGEMENT AND REMOVAL OF FACILITIES

10.1 Notice. Except in cases of an emergency involving safety of persons or protection of property, i Licensor shall provide sixty (60) days written notice to Licensee whenever Licensor intends to replace, relocate, abandon or remove an Attached Pole, provided that in cases of emergency, Licensor shall provide such notice to Licensee as soon as commercially practicable. Notwithstanding the foregoing, if a federal,

state, county or municipal authority or private landowner requires discontinuance of the Attached Pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly. In instances for which notice is provided, Licensor shall specify the Poles involved and the time of such proposed replacement, relocation, abandonment or removal.

10.2 Licensee Obligations. If Licensor replaces or relocates an Attached Pole, Licensee shall transfer its Attachments to the new or relocated Attached Pole within the time so specified by Licensor. If Licensor wishes to abandon or remove an Attached Pole, Licensee shall, at the time specified, remove its Attachments from the Attached Pole. Should Licensee fail to transfer or remove its Attachments at the time specified for such transfer or removal, Licensor may elect to: (i) transfer Licensee's Attachments; (ii) remove Licensee's Attachments; (iii) charge Licensee an additional fee for the continuing Attachments at the rate of $25.00 per Pole per month for each month or portion thereof that the Attachments remain on the Poles. If Licensor elects to transfer or remove Licensee's Attachments, Licensee shall reimburse Licensor for the costs of such transfer or removal, plus an additional 50% of such costs, and Licensor shall not be liable for any loss or damage to Licensee's facilities that may result.

10.3 Emergency Rearranging, Transfer or Removal. Notwithstanding the foregoing, Licensor may replace, relocate, remove, or abandon Poles in an emergency if required, as determined by Licensor, and rearrange, transfer or remove Licensee's Attachments. If Licensor elects to rearrange, transfer or remove Licensee's Attachments in an emergency, Licensee shall reimburse Licensor for all costs of such rearrangement, transfer or removal. Licensor service restoration in an emergency shall take priority over the restoration of Licensee's service.

10.4 Replacement and Relocation Costs. Licensor shall replace or relocate Poles at its own expense, except as otherwise provided in this Section 10 and in Sections 3 and 5.

10.5 Reservation of Space. Licensor may reserve space on the Poles for (i) future expansion of its core utility service, and (ii) the provision of emergency service. Licensee may not occupy any utility space or space on the Poles that is reserved for the provision of emergency service. If Licensor has reserved space on any Pole for future expansion, Licensee may make Authorized Attachments in that reserved space until such space is required by Licensor, at which point Licensee shall, upon receipt of sixty (60) days' notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) request that Licensor replace such Pole with a taller or stronger pole that will accommodate Licensee's attachment(s). Should Licensee fail within the 60-day notice period to vacate the space or request Licensor to replace the Pole, Licensor may remove Licensee's Attachments without liability and Licensee shall reimburse Licensor for the cost associated with the removal.

10.6 Costs for Installation, Rearrangement, Removal and Transfer of Licensee's Attachments. Licensee shall be solely responsible for all costs of installation, rearrangement, removal or transfer of its Attachments on, from or to Licensor's Poles, including, as appropriate, the recovery of its costs from any other attaching entity. Licensee expressly agrees and understands that it shall not, at any time, seek reimbursement from Licensor of the costs incurred by or on behalf of Licensee to remove, relocate, re-arrange, transfer, or replace Licensee's Authorized Attachments.

10.7 Costs for Rearrangement of Other Facilities. In any case where the facilities of Licensor or any other attacher(s) are required to be rearranged on the poles of Licensor in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) for the total reasonable costs incurred by Licensor, and Licensee shall be solely responsible for the notification to,

coordination with and the payment of any cost incurred for the installation, rearrangement, removal or transfer of the facilities by any other attacher(s).

10.8 Removal of Attachments by Licensee. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Poles and, except as provided in Section 17 (Termination of Agreement), Licensee shall remove any unused Attachments within thirty (30) days of discontinuance. All work to repair or replace poles used for Attachments shall be performed by Licensor at Licensee's expense. Licensee shall provide at least ten (10) days prior written notice of any such removal to Licensor in the form of Exhibit B. Such notice shall fully identify the location of the Poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment License Fee payments shall continue until: (i) Licensor receives such notice; (ii) Licensee actually removes its Attachments;; and (iii) Licensee advises Licensor of the date on which such Attachments were removed and affected Poles repaired. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no additional consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement.

11.2 Required Authorizations. Licensee represents and warrants that it has obtained all Required Authorizations, and covenants that it will maintain and comply with the Required Authorizations throughout the Term. Upon written request, Licensee shall provide Licensor with reasonable evidence that it has obtained any or all Required Authorizations.

11.3 LIMITATIONS ON WARRANTIES. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION REGARDING THE CONDITION AND SAFETY OF LICENSOR'S POLES OR THE SCOPE OF THE EASEMENTS OR RIGHTS-OF-WAY NECESSARY FOR LICENSEE TO PROVIDE THE SERVICES.

11.4 No Waiver of Licensee Obligations. No actions or omissions of Licensor pursuant to this Agreement shall be construed as a warranty or representation by Licensor that Licensee has fulfilled any of its obligations pursuant to this Agreement and shall not relieve Licensee of its covenant to fulfill such obligation.

12. INDEMNIFICATION

12.1 Licensee Indemnification. Licensee shall indemnify, defend, protect, save harmless and insure Licensor and its directors, officers, shareholders, affiliates, employees, agents, representatives, insurers, lenders, invitees, contractors and subcontractors (each hereinafter referred to as "Indemnitee") from and

against any and all claims and demands for, or litigation with respect to, any damages whatsoever that are (i) caused by Licensee, its directors, officers, managers, employees, agents, contractors, subcontractors, suppliers, licensees, grantees, invitees or persons or entities under the direct or indirect control or authority of Licensee (collectively, "Licensee Entities"), (ii) caused by the negligence of one or more Indemnitees; or (iii) related to the initiation, provision, continuation or termination of the Services, the Services themselves, the Attachments, or the proximity of Licensee Entities on or in the vicinity of Licensor's Poles, including but not limited to: violation of property rights, service interruptions, damages to property, injury or death to persons, payments made under any workers compensation law or under any plan for employee disability and death benefits, and including all expenses incurred in defending against any such claims or demands, except to the extent arising out of or caused by the gross negligence or malicious conduct of one or more Indemnitees. Licensee expressly and specifically waives any constitutional or statutory immunity relating to workers compensation that may be available under applicable state law.

12.2 Notice. In the event of any claim, demand or litigation specified in this section, the Indemnitee(s) shall give reasonable, prompt notice to Licensee of such claim, demand or litigation. Licensee shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the Indemnitee(s)'s consent, which consent shall not be unreasonably withheld. The Indemnitee(s) shall cooperate with Licensee in the defense and/or settlement of any claim, demand or litigation at Licensee's expense. Nothing herein shall be deemed to prevent the Indemnitee(s) from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnitee(s)'s own counsel at the Indemnitee(s)'s own expense. No Indemnitee shall take any action to settle, to compromise or otherwise to make any payment, admission, or statement to or for the benefit of any third party claimant without Licensee's written consent.

13. LIMITATIONS ON DAMAGES

(A) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

(B) NOTWITHSTANDING ANY PROVISION OR IMPLICATION TO THE CONTRARY, IN NO EVENT (EXCEPT AS MAY BE OTHERWISE REQUIRED BY ANY APPLICABLE STATUTE, LAW, RULE OR THE APPLICATION OF COMMON LAW REQUIREMENTS REGARDING LIABILITY AS TO GROSS NEGLIGENCE AND/OR MALICIOUS CONDUCT) SHALL THE LIABILITY OF LICENSOR PURSUANT TO THIS AGREEMENT EXCEED THE ATTACHMENT FEES THERETOFORE PAID BY LICENSEE TO LICENSOR DURING ANY BILLING PERIOD PURSUANT TO THIS AGREEMENT.

14. INSURANCE

14.1 Insurance Requirement. Licensee shall carry insurance in such form and issued by such companies with a minimum A.M. Best rating of A-VII or higher to protect the Parties from and against claims, demands, actions, judgments, costs, expenses and liabilities or by reason of any loss, injury, death, or

damage involving any Attachment which may arise out of or result directly from the use and occupancy of the premises and the operations conducted thereon. Throughout the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain substantially the same insurance with substantially the same limits as required of Licensee, the following insurance:

(a) Workers' compensation in compliance with the statutory requirements of the state of operation and employer's liability insurance, with limits of One Million Dollars ($1,000,000) each accident/disease/policy limit, covering all employees who perform any of Licensee's obligations under this Agreement,

(b) Commercial General Liability Insurance having an available limit of $5,000,000 per occurrence for bodily injury (incluidng death) and property dmage and $5,000,000 general aggregate including contractual liability, personal and advertising injury, products and com[pleted operatinos liability (which shall continue for a least one (1) year after completion), premises and operations liability, contractual liabiltiy railroads (if work within 50 feet of any) and explosion, collapse, and udnerground hazard coverage.

(c) Commercial automobile liability insurance with a combined single limit of Five Million Dollars ($5,000,000) each accident for bodily injury and property damage covering all owned, hired and non-owned automobiles, including contractual liability.

(d) Umbrella/Excess Liability insurance with limits of $1,000,000 per occurrence providng coverage above the underlying Employer's, Commercial General and Auto Liability Insurance, and provide at least the same scope of coverages thereunder.

(e) Such other insurance as may be necessary to protect Licensor from and against any and all insurable claims, demands, suits, actions, causes of action, proceedings, judgments, awards, losses, fees, costs, expenses and liabilities or by reason of any injury, loss or death which may arise out of or result from the use and occupancy of the premises and the operations conducted thereon.

14.2 Additional Insureds. The policies required by Sections 14.1(b)-(d) shall include Licensor and its directors, officers, members and employees as additional insureds as their interest may appear under this Agreement (except for workers' compensation and employer liability) and shall stipulate that the insurance afforded for Licensee, its directors, officers, members and employees shall be primary insurance and that any insurance carried by Licensor, its directors, officers, members or employees shall be excess and not contributory insurance.

14.3 Waiver of Subrogation. Licensee and its insurers providing the required coverage shall waive all rights of subrogation against Licensor and its directors, officers, employees and agents.

14.4 Certificate of Insurance. Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall furnish Licensor with certificates of insurance as evidence that policies providing the required coverage, conditions and limits are in full force and effect. The certificates shall identify this Agreement. Upon receipt of notice from its insurer, Licensee will use its best efforts to provide Licensor with thirty (30) days' prior notice of cancellation. In the event of the Licensee's failure to maintain any insurance required in 14.1, the Licensor shall have the right to cancel this Agreement. Licensor shall not be obligated to review any of Licensee's certificates of insurance, and/or endorsements or advise Licensee of any deficiencies in such documents, and any receipts of certificates or

review by Licensor shall not relieve Licensee from or be deemed a waiver of Licensor's right to insist on strict fulfillment of Licensee's obligations.

All such notices will be sent directly to Licensor at the following address (or other address as may be specified by Licensor):

Duke Energy _____
Joint Use – Tower Leasing Contract Management
Joint Use Administration
Mail Code : _____
_____
_____

14.5 Responsibility for Contractors. Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors obtain and maintain substantially the same insurance with substantially the same limits as required of Licensee before they perform any work for Licensee in connection with this Agreement, and shall demonstrate such full compliance upon request of Licensor.

14.6 No Limitation on Indemnities. Failure of LICENSEE to maintain adequate insurance coverage shall not relieve LICENSEE of any contractual responsibility or obligation. The requirement, provided herein as to type, limits, and coverages to be maintained by LICENSEE is not intended to, and shall not in any manner, limit or quantify the liabilities and obligations assumed by LICENSEE. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Section 12. The contractual liability coverage shall insure the performance of all obligations assumed hereunder, including specifically, but without limitation, the indemnity provisions in this Agreement.

14.7 Modification of Insurance Requirements. Licensor may periodically amend the insurance requirements in this Section 14 to require additional insurance coverage or other changes, as deemed necessary by Licensor but only after providing the Licensee with ninety (90) days' notice of such change.

15. DISCHARGE OF LIENS

15.1 Waiver. Licensee waives, and shall require all of its contractors, subcontractors and suppliers to waive, any and all liens and claims of liens, and the right to file and enforce and otherwise assert any such liens and claims of liens, against Licensor, Licensor's Pole(s), and any other Licensor property and facilities in connection with Licensee's Attachments or in connection with work done by or on behalf of Licensee. Licensee shall include, and shall require its contractors, subcontractors and suppliers to include this lien waiver provision in all agreements with contractors, subcontractors and suppliers.

15.2 Discharge. If any liens or claims of liens are filed or asserted against Licensor, Licensor's Pole(s), or any other property or facilities of Licensor pursuant to work performed by Licensee or in connection with work done by or on behalf of Licensee, Licensee shall, within thirty (30) days after written notice of such lien, discharge or remove any such lien or claim by bonding, payment or otherwise. Notwithstanding the foregoing, Licensee may contest any such lien, in good faith, in an appropriate proceeding, and shall notify Licensor promptly when such lien or claim has been discharged or removed. Without limiting the generality of any other provision of this Agreement, Licensee assumes all liability for, and shall indemnify, protect and save harmless Licensor and Licensor's directors, officers, shareholders, affiliates, employees, agents, representatives, insurers, lenders, invitees, contractors and subcontractors from and against all liens and claims of liens filed pursuant to work performed by Licensee or in connection with work done by or on behalf of Licensee.

16. DEFAULTS

16.1 Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure periods specified in Sections 6.3 and 16.2 below, Licensor may, in addition to all other remedies available by contract, law and equity, at its option and without further notice:

(a) terminate this Agreement;
(b) terminate the Authorization covering the Pole(s) with respect to which such Default shall have occurred;
(c) decline to authorize additional attachments under this Agreement until such Default is cured;
(d) suspend Licensee's access to or work on any or all of Licensor's Poles;
(e) perform work necessary to correct such Default; and/or
(f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction; and/or
(g) file a lien on Licensee's Attachments for the amounts due and owing at that time (which Licensor may foreclose upon immediately), and Licensor will be deemed to have a security interest in Licensee's Attachments for such amount.

16.2 Licensee Cure Period. Licensee shall be entitled to take all steps necessary to cure any Defaults for a period of thirty (30) days following receipt of written notice from Licensor or other mutually agreed time period that may be required for Licensee to diligently work to cure any Default The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement; however, the 10 day cure period set out in Section 6.3 shall apply to Defaults in payment.

16.3 Termination Because of Licensee Default. If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment License Fees.

16.4 Reimbursement for Licensor Work. If Licensee fails to cure a Default within the cure periods in Section 16.2 above with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all cost associated with the removal plus 50%.

16.5 Licensor Default. If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following receipt of written notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its sole discretion terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensor is in Default and Licensee elects to terminate the Agreement, Licensor shall within thirty (30) days' refund to Licensee on a pro rata basis any Pole Attachment License Fees paid for the current billing period.

16.6 Attorney's Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Agreement, the defaulting Party agrees to pay all reasonable attorney's fees and court costs of litigation incurred by the other Party, should that Party prevail in a formal enforcement action.

17. TERMINATION OF AGREEMENT

Upon termination of this Agreement, Licensee shall, within sixty (60) days: (i) remove all of its Attachments from Licensor's Poles; and (ii) advise Licensor of the date on which such Attachments were removed and affected Poles repaired. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to: (a) remove Licensee's Attachments without liability, and Licensee shall reimburse Licensor for the associated costs plus an additional 50% of such costs; and (b) seek the payment of holdover fees, on a monthly basis, at the Pole Attachment License Fee rate. All work to repair or replace poles used for Attachments shall be performed by Licensor at Licensee's expense. All of Licensee's pre-termination obligations with respect to Attachments shall remain in full force and effect until such time as all the Attachments have been removed from Licensor's Poles.

18. WAIVER OF TERMS OR CONDITIONS

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

19. MODIFICATIONS

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor pursuant to this Agreement upon thirty (30) days notice to Licensee. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

20. PAYMENT OF TAXES

Each Party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

21. NOTICES

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), electronic mail transmission, or certified U.S. mail return receipt requested to the person(s) identified on pages 1-2 of this Agreement, except that any notice, request, consent, demand, designation, approval, or statement that could affect or create: (1) either Party's ability to provide service over its facilities; (2) a monetary obligation under this agreement; (3) commencement of a cure period; (4) a legal obligation, such as an obligation to indemnify or right to pursue legal action; or (5) a termination under this Agreement, shall be sent by personal delivery, overnight delivery or certified U.S. mail return receipt requested as provided above. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery or certified U.S. mail shall be effective upon receipt.

22. CONFIDENTIALITY

Neither Party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement nor any materials provided by either Party specifically marked as confidential, except upon written consent of the other Party, or as may be required by applicable

law or governmental authorities. Notwithstanding the foregoing, nothing in this section shall prevent disclosure to a Party's authorized legal counsel or contractors performing work for Licensee hereunder who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the Parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the Party called upon to make such disclosure shall provide notice to the other Party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall expurgate therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

23. FORCE MAJEURE

(a) Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

(b) If any Pole or other Licensor facility is damaged or destroyed by a force majeure event so that, in Licensor's sole discretion, the Pole is rendered materially unfit for the purposes described in this Agreement, and Licensor opts not to repair or replace the Pole or other facility, then the Authorization for the Pole shall terminate as of the date of such damage or destruction.

24. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the state in which the Poles that are the subject of this Agreement are located, excepting only that state's conflict of law principles. Any action at law or judicial proceeding shall be instituted only in the state or federal courts of the state in which said Poles are located.

25. CONSTRUCTION OF AGREEMENT

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms. Section headings are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

26. OWNERSHIP RIGHTS

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel Licensor to maintain any of its poles for a longer period than is required by Licensor's own service requirements. All facilities of Licensee attached to the Poles under this Agreement shall remain the property of Licensee, except as otherwise provided herein.

27. THIRD PARTY BENEFICIARIES

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

28. PRIOR AGREEMENTS SUPERSEDED

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter. Such agreements are shown but not limited to those as shown on Exhibit E. Any licenses issued under prior agreements shall be transferred to and governed by this Agreement.

29. ASSIGNMENT AND TRANSFER

Licensee may assign this Agreement and any Authorization to any entity which acquires all of Licensee's assets in the market defined by the FCC in which the Pole is located by reason of a merger, acquisition or other business reorganization without approval or consent of Licensor, but such assignment is voidable at Licensor's option unless the assignee has complied with the insurance requirements in Section 14 of this Agreement and the security requirement in Section 6.6 of this Agreement. Excepting the foregoing, Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of Licensor. No such consent granted by Licensor shall be effective until Licensee's assignee or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

30. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS

This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

31. SURVIVAL; LIMITATIONS ON ACTIONS

Notwithstanding the termination of this Agreement for any reason, Sections 12, 13, 15, 17, 18, 21, 22, and 24 through 28 inclusive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued

prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

32. TIME OF ESSENCE

Time is of the essence in this Agreement.

33. DISPUTE RESOLUTION

In the event any dispute arises between the Parties under this Agreement, the Party seeking resolution of the dispute must submit written notice to the other describing the dispute and such Party's desire to resolve the dispute in accordance with the provisions of this Section 33, unless the Parties at any time mutually agree in writing to dispense with the dispute resolution process under this Section 33 for a particular dispute. If the Parties are then unable to resolve such dispute in the normal course of business within fifteen (15) days after delivery of the written notice as provided herein, each of the Parties shall promptly appoint a designated representative who has authority to settle the dispute. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to the dispute within forty-five (45) days after the Parties' appointment of the designated representatives, then either Party may submit the dispute to nonbinding mediation before the regulatory authority having proper jurisdiction pursuant to such regulatory authority's rules and practices for handling such disputes. Each Party shall bear its own costs and expenses in seeking resolution of any dispute under this Agreement pursuant to this Section 33. The dispute resolution procedures in this section shall not preclude either Party from exercising Default remedies while the dispute is being resolved. Neither Party shall pursue any other rights or remedies under law or equity until that Party has first exhausted its administrative remedies under this Section 33, unless no regulatory authority has proper jurisdiction, in which case exhaustion of administrative remedies hereunder is not required.

[END OF TERMS AND CONDITIONS]

Exhibit A

Telecommunications Pole Attachment Request

Duke Energy _____

This document is used to track pole attachment requests submitted by Telecommunications companies.

Section 1: General Information (Completed by Licensee)

Date of Request: _____ Name of Company:_____ JUMS Contract No: _____

Contact Name:_____ Phone Num:_____ Email: _____

Estimated Number of Attachments: _____ Licensee's Project or Reference Number: _____

Type Request: ☐ New Attachments ☐ Modification to Existing Attachments ☐ Other

Describe: _____

Location of Attachments:

State _____ County _____ Description _____

_____

Each application must be accompanied with a map showing specific pole locations along with tabulated cable attachment point measurements of existing attachments including lowest Duke Energy attachment (neutral, secondary, riser attachment points, street light brackets, drip loops, etc.)

Section 2: Engineering Information (Completed by Duke Energy)

Assigned Exhibit Number: _____

Forwarded to Zone Contact: _____ Date Sent: ____/____/____

Project Engineer: _____

Duke Work Request Number: _____ Field Survey Completion Date: ____/____/____

Actual Number of Attachments: _____

Check One:

- ☐ **Make-Ready Work Required - Charges based on Estimated Cost of $_____**
- ☐ **Make-Ready Work Required – Estimated Cost of $_____. Charges will be based on Actual Project Cost at Completion of Project**
- ☐ **No Make-Ready Work Required - Invoice for $_____ will be submitted for Engineering Survey**

License granted _____, 20_____, subject to Licensee acceptance proposed charges as described above.

By_____ Title_____
Duke Energy

Date Forwarded to Applicant for Acceptance: ____/____/____

Section 3: Acceptance of Cost and Authorization for Work by Licensee:

The above Make-Ready Costs approved and authorization granted to proceed with Make-Ready Work at Licensee's expense.

By _____ Date: _____
Licensee

Title_____ Phone: _____Email: _____

EXHIBIT B

NOTICE OF TERMINATION

Date of Notice: _____/____/____
Telecommunications Company Assigned Permit or Reference Number: _____

Licensee: JUMS# _____
Company Name _____
Company Address _____
City, State Zip _____

Duke Energy:

In accordance with the terms of the Pole Attachment Agreement dated _____, notification is hereby provided that Licensee will remove its Attachments to the following Poles located in:

_____
(City or Town - County and State)

Number of Attachments to be Removed: _____

Location of Attachments to be Removed: **[SEE ATTACHED]**

Anticipated Removal Date: _____

In accordance with the Pole Attachment Agreement, Licensee shall: (i) treat the relevant area where its Attachments were located on all affected poles with an industry-accepted wood preservative; (ii) plug all holes left by such Attachments; (iii) otherwise repair any damage to poles or other facilities that is caused by Licensee's use or removal of its Attachments; and (iv) notify Licensor of the date on which it removed and repaired the poles.

By: _____ Phone Number: _____
Licensee

_____
Title

Notification of removal of the above-referenced Attachments is acknowledged _____/___, _____.

By: _____ Phone number: _____
Duke Energy Representative

_____
Title

Licensor: Duke Energy _____

EXHIBIT B (Cont'd)

LOCATION OF ATTACHMENTS TO BE REMOVED

(use additional sheets as necessary)

EXHIBIT C

SCHEDULE OF LETTER OF CREDIT OR CASH DEPOSIT

DUKE ENERGY _____, _____

NUMBER OF ATTACHMENTS			AMOUNT OF COVERAGE
0	THROUGH	1,000	$50,000
1,001	THROUGH	2,000	$100,000
2,001	THROUGH	3,000	$150,000
3,001	THROUGH	4,000	$200,000
4,001	THROUGH	5,000	$250,000
5,001	THROUGH	6,000	$300,000
6,001	THROUGH	7,000	$350,000
7,001	THROUGH	8,000	$400,000
8,001	THROUGH	9,000	$450,000
9,001	THROUGH	10,000	$500,000

For any attachments in excess of 10,000, the required cash deposit or letter of credit shall be $50,000 per each 1,000 attachments (or any portion thereof).

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:
[Duke Energy legal entity name]_____
550 South Tryon Street, DEC40C
Charlotte, NC 28202
Attention: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

_____
_____
_____

We hereby issue in your favor our irrevocable letter of credit No.: _____ ("Letter of Credit") for the account of _____ (the "Applicant") for an amount or amounts not to exceed _____ US Dollars in the aggregate (US$_____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (which date, as may be extended in the manner provided herein is referred to as the "Expiration Date"). This Letter of Credit shall be automatically extended, without amendment, for successive one (1) year periods unless we provide Beneficiary with not less than sixty (60) days' prior written notice by overnight courier to the address set forth above that we elect not to renew this Letter of Credit. Upon receipt by the Beneficiary of any such notice not to renew this Letter of Credit and notwithstanding anything in this Letter of Credit to the contrary, the Beneficiary may draw any or the entire amount available hereunder by presenting drawing documents in compliance with the terms and conditions of this Letter of Credit.

Funds under this Letter of Credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this Letter of Credit. Partial drawings under this Letter of Credit are permitted.

We hereby undertake to promptly honor your drawing(s) presented in compliance with the terms of this Letter of Credit, up to the amount then available herein, in no event will payment exceed the amount then available to be drawn under this Letter of Credit.

We engage with you that drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this Letter of Credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed two (2) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this Letter of Credit to [Issuing Bank's contact information], specifically referring to the number of this Letter of Credit.

All banking charges are for the account of the Applicant.

This Letter of Credit may not be amended, changed or modified without our express written consent and the consent of the Applicant and the Beneficiary.

Very truly yours
[Issuing Bank]

_____
Authorized Signer

_____
Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]
[account number]
[name and address of bank at which account is maintained]
[aba number]
[reference]

The following amount:

[insert number of dollars in writing] United States Dollars
(US$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

[Beneficiary]

By: _____
Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

Duke Energy_____ (the "Beneficiary") is drawing the funds requested under this draft based on the below specified draw condition:

[check appropriate draw condition]

[_____] An event of default has occurred with respect to [Name of contracting entity] under that certain [Name of Agreement] between [Insert Beneficiary's name] and [Name of contracting entity] dated as of _____ (the "Agreement") and such default has not been cured within the applicable cure period, if any, provided for in the Agreement

Or

[_____] Applicant has failed to renew or replace the Letter of Credit and/or provide other acceptable replacement collateral as required in the Agreement, and less than thirty (30) days remain prior to the expiration of the Letter of Credit, wherefore Beneficiary hereby demands payment of US$_____ to be held as collateral until Beneficiary is provided with a replacement letter of credit or other acceptable collateral.

Duke Energy _____

By: _____

Title:_____

EXHIBIT D

NATURE OF SURFACE UNDERNEATH WIRES, CONDUCTORS OR CABLES	INSULATED COMMUNICATION CONDUCTORS AND CABLES; MESSENGERS; GROUNDED GUYS; NEUTRAL CONDUCTORS, (FT.)	TRIPLEX AND QUADRUPLEX CABLES, 0 TO 750 V, AND NON-INSULATED COMMUNICATIONS CONDUCTORS (FT.)	OPEN WIRE SERVICE / SECONDARY CONDUCTORS, 0 TO 750 V (FT.)	OVERHEAD PRIMARY CONDUCTORS, OVER 750V TO 22kV (FT.)
	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED
1. ROADS, STREETS, AND OTHER AREAS SUBJECT TO TRUCK TRAFFIC.	15.5 (SEE NOTE 4)	15 (SEE NOTE 4)	15.5 (SEE NOTE 4)	18.5
2. DRIVEWAYS, PARKING LOTS, AND ALLEYS	15.5 (SEE NOTE 3)	15 (SEE NOTE 3)	15.5 (SEE NOTE 3)	18.5
3. OTHER LAND TRAVERSED BY VEHICLES, SUCH AS CULTIVATED, GRAZING, FOREST, ORCHARD, ETC. (SEE NOTE 5)	15.5	15	15.5	18.5
4. SPACES AND WAYS SUBJECT TO PEDESTRIANS OR RESTRICTED TRAFFIC ONLY	9.5	11.0 (SEE NOTE 3)	12.5 (SEE NOTE 3)	14.5
5. WATER AREAS NOT SUITABLE FOR SAILBOATING OR WHERE SAILBOATING IS PROHIBITED	14.0	14.5	13.5	17.0
6. WATERWAYS / BODIES OF WATER SUITABLE FOR SAILBOATING	SEE DWG. 10.02-07 FOR CLEARANCES			
7. PUBLIC OR PRIVATE LAND AND WATER AREAS POSTED FOR BIDDING OR LAUNCHING SAILBOATS	CLEARANCE ABOVE GROUND SHALL BE 5 FT. GREATER THAN ON DWG. 10.02-07			
WHERE WIRES, CONDUCTORS, OR CABLES RUN ALONG AND WITHIN THE LIMITS OF HIGHWAYS OR OTHER ROAD RIGHT-OF-WAY BUT DO NOT OVERHANG THE ROADWAY				
8. ROADS, STREETS, OR ALLEYS	15.5	16.0	16.5	18.5
9. ROADS IN RURAL DISTRICTS WHERE IT IS UNLIKELY THAT VEHICLES WILL BE CROSSING UNDER THE LINE	13.5	14.0	14.5	16.5

NOTES:

1. THE ABOVE MINIMUM CLEARANCES IN THE TABLE MUST BE MET USING THE FOLLOWING ICE AND WIND CONDUCTOR LOADING. THE VALUES CAN BE FOUND IN THE SAG AND TENSION TABLES. USE THE FOLLOWING LOADING CONDITION THAT PRODUCES THE GREATEST SAG:
   - CONDUCTOR TEMPERATURE 120°F AND NO WIND DISPLACEMENT, OR
   - MAXIMUM CONDUCTOR TEMPERATURE FOR WHICH THE LINE IS DESIGNED TO OPERATE AND NO WIND DISPLACEMENT, OR
   - 32°F WITH RADIAL ICE THICKNESS SPECIFIED ON DWG. 10.00-05, NO WIND DISPLACEMENT.
2. REFER TO NATIONAL ELECTRICAL SAFETY CODE (NESC) RULE 232 FOR MINOR EXCEPTIONS AND REFINEMENTS.
3. WHERE HEIGHT OF ATTACHMENT TO BUILDING DOES NOT PERMIT TRIPLEX SERVICE DROPS TO MEET THIS VALUE, THE CLEARANCE MAY BE REDUCED TO THOSE VALUES IN NESC TABLE 232-1, FOOTNOTES 7 AND 8.
4. THE MINIMUM VERTICAL CLEARANCE OF ALL CONDUCTORS, CABLES, GUYS, ETC. MAY BE GREATER FOR DOT MAINTAINED HIGHWAYS OR LIMITED ACCESS HIGHWAYS. SEE DWG. 10.02-03.
5. WHEN DESIGNING A LINE TO ACCOMMODATE OVERSIZED VEHICLES, THESE CLEARANCE VALUES SHALL BE INCREASED BY THE DIFFERENCE BETWEEN THE KNOWN HEIGHT OF THE VEHICLE AND 14 FT.

DUKE ENERGY.

REVISED	BY	CK'D	APPR.
3			
2			
1			
0			

VERTICAL FINAL SAG CLEARANCES ABOVE GROUND

ADAPTED FROM NESC TABLE 232-1

DEC	DEM	DEP	DEF
X	X	X	X

10.02-01

STATE	REQUIRED CLEARANCE OVER STATE MAINTAINED D.O.T. ROADS (FT.)	REQUIRED CLEARANCE OVER LIMITED ACCESS HIGHWAYS (FT.)	REFERENCE MANUAL
FLORIDA	18	24	UTILITIES ACCOMMODATION MANUAL, 4.2A AND 4.8.2
INDIANA	18	18	UTILITY ACCOMMODATION POLICY, 6.0 (7)
KENTUCKY	18	24	PERMITS GUIDANCE MANUAL 202-2 AND 202-3
NORTH CAROLINA	18	18	POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY, P-1
OHIO	16.5	16.5	POLICY FOR ACCOMMODATION OF UTILITIES, 5108.01.C
SOUTH CAROLINA	NESC MINIMUMS	NESC MINIMUMS	UTILITIES ACCOMMODATION MANUAL, 6.2.1

NOTES:

1. THE VALUES IN THE ABOVE TABLE APPLY TO ALL UTILITY LINES, NOT JUST THOSE OWNED BY DUKE ENERGY. THE DESIGNER SHOULD ENSURE ENOUGH HEIGHT IS OBTAINED AT THE SUPPORTING STRUCTURE TO PROVIDE ADEQUATE VERTICAL CLEARANCE FOR THE LOWEST ATTACHING UTILITY WHILE ALSO MAINTAINING THE APPROPRIATE MID-SPAN CLEARANCES BETWEEN UTILITIES.
2. AT NO TIME SHALL DUKE ENERGY LINES BE LESS THAN THE MINIMUM VALUES REQUIRED BY THE NESC.
3. THE VALUES IN THE ABOVE TABLE ARE BASED ON WHICHEVER OF THE FOLLOWING CONDITIONS PRODUCES THE MAXIMUM SAG OR MINIMUM CLEARANCE VALUE WITH NO WIND DISPLACEMENT:
   A. CONDUCTORS AT 120°F, FINAL SAG (USED FOR PRIMARY CONDUCTORS IF NO OTHER MAXIMUM TEMPERATURE IS KNOWN AND FOR NEUTRAL CONDUCTORS) OR
   B. CONDUCTORS AT THE MAXIMUM OPERATING TEMPERATURE FOR WHICH THE LINE IS DESIGNED TO OPERATE, FINAL SAG OR
   C. CONDUCTORS AT 32°F, WITH THE RADIAL THICKNESS OF ICE REQUIRED BY DWG. 10.00-05, FINAL SAG.

3				
2				
1				
0	[illegible]	[illegible]	[illegible]	[illegible]
REVISED		BY	CK'D	APPR.

D.O.T. CLEARANCES OVER STATE MAINTAINED ROADS AND LIMITED ACCESS HIGHWAYS

DUKE ENERGY.

DEC	DEM	DEP	DEF
X	X	X	X

10.02-03

GENERAL

1. ANYONE REQUESTING TO INSTALL AND MAINTAIN ATTACHMENTS ON DUKE ENERGY POLES SHALL SUBMIT THE APPROPRIATE AUTHORIZATION TO THE JOINT USE UNIT BEFORE ANY FACILITIES CHANGES ARE MADE. A PERMIT IS REQUIRED IN ORDER TO MAINTAIN ACCURATE ATTACHMENT INVENTORIES AND TO OBTAIN TECHNICAL DATA NECESSARY TO REVIEW THE ADEQUACY OF EXISTING DISTRIBUTION AND/OR TRANSMISSION SYSTEM FACILITIES. POLE UTILIZATION REQUIRING PERMITS INCLUDE: INSTALLATION OF NEW ATTACHMENTS, REMOVAL OF EXISTING ATTACHMENTS, UPGRADE TO LARGER CABLE, LASHING OF NEW CABLES TO EXISTING MESSENGERS, REBUILDS OF CABLE SYSTEMS, LARGE SCALE RELOCATIONS FOR ROAD WIDENING, ETC. AND INSTALLATION OF SERVICE DROPS ON LIFT POLES.

2. ALL PERMITTED ATTACHMENTS SHALL BE ON THE SAME SIDE OF THE POLE AS THE SECONDARY OR NEUTRAL, EXCEPT WHEN APPROVED IN WRITING BY DUKE ENERGY. DUKE ENERGY SHALL MAKE EVERY ATTEMPT TO INSTALL REPLACEMENT POLES ON THE FIELD SIDE OF EXISTING FOREIGN ATTACHMENTS.

3. NO PERMANENT CLIMBING AIDS ARE ALLOWED ON DUKE ENERGY POLES.

4. MESSENGER CABLE(S) SHALL BE BONDED WITH APPROPRIATE ELECTRICALLY RATED CONNECTORS TO THE ELECTRIC COMPANY'S VERTICAL GROUND WIRE, WHERE ONE EXISTS. PROTECTIVE MOLDING IF IN PLACE MAY BE CUT TO FACILITATE BONDING; HOWEVER, UNDER NO CIRCUMSTANCE, SHALL THE VERTICAL GROUND WIRE BE CUT.

5. ALL NEW POWER SUPPLIES AND NEW METERING EQUIPMENT SHALL BE MOUNTED ONLY ON CUSTOMER OWNED FACILITIES. ALL POWER SUPPLY INSTALLATIONS MUST HAVE APPROPRIATE DISCONNECT DEVICES. NEW STRAND MOUNTED POWER SUPPLIES WILL BE BILLED ON A METERED ACCOUNT BASIS. EXISTING INSTALLATIONS WHERE POWER SUPPLIES AND METERING EQUIPMENT ARE LOCATED ON COMPANY OWNED FACILITIES CAN REMAIN AS CURRENTLY INSTALLED. ANY UPGRADE, RELOCATION, POLE CHANGEOUT (EXCEPT IN THE CASE OF UNPLANNED EMERGENCY WORK OR OUTAGE RELATED INCIDENT) OR OTHER CHANGE TO THE FACILITIES WILL ADHERE TO THE CURRENT POLICY. IN DENSELY POPULATED DOWNTOWN AREAS OR OTHER INSTANCES WHERE EXISTING AGREEMENTS ARE IN PLACE WITH THE RIGHT-OF-WAY OWNER, POWER SUPPLIES AND METERING EQUIPMENT MAY BE ALLOWED ON COMPANY OWNED FACILITIES. THE CUSTOMER MUST PROVIDE WRITTEN VERIFICATION FROM THE RIGHT-OF-WAY OWNER THAT ADDITIONAL FACILITIES OF ANY KIND (POLE, PEDESTAL, ETC) CANNOT BE ADDED WITHIN THE RIGHT-OF-WAY. THESE REQUESTS WILL BE HANDLED ON A CASE BY CASE BASIS, AND THE COST OF ANY ENGINEERING LABOR AND MAKE-READY WORK WILL BE BORNE IN FULL BY THE CUSTOMER.

6. ONLY DEVICES SUCH AS ANTENNAS AND THEIR RELATED CABLING ARE PERMITTED ON COMPANY FACILITIES AS DESCRIBED ON THE ACCOMPANYING PAGES. CRITERIA SURROUNDING DISCONNECTS, WARNING SIGNS, ETC THAT ADDRESS PROPER WORK PRACTICES AROUND RF EMITTING DEVICES MUST BE FOLLOWED AT ALL TIMES. THESE INSTALLATIONS ARE EVALUATED INDIVIDUALLY, AND REGARDLESS OF OTHER CIRCUMSTANCES CAN BE DENIED AT THE COMPANY'S DISCRETION.

7. WHERE REQUESTS FOR INSTALLATIONS INVOLVE WOODEN STREET LIGHT ONLY POLES AND MEET THE ABOVE CRITERIA FOR INSTALLATION ON THE POLE, THE ENGINEERING ANALYSIS MUST ACCOUNT FOR THE CAPACITY AND VOLTAGE DROP OF EXISTING STREET LIGHTING CABLE AND THE STRENGTH OF THE POLE TO ACCEPT THE PROPOSED EQUIPMENT. FOR DECORATIVE, NON-WOODEN INSTALLATIONS, SPECIALLY DESIGNED POLES MAY BE RECOMMENDED IN THESE INSTANCES THAT PLACE THE CABLING AND OTHER CONDUITS WITHIN THE POLE. LEAD TIMES FOR THESE SPECIAL ORDER ITEMS SHOULD BE ACCOUNTED FOR IN ANY DISCUSSIONS WITH THE CUSTOMER.

8. UNMETERED EQUIPMENT IS NOT PERMITTED EXCEPT IN THOSE JURISDICTIONS WHERE ALLOWED BY EXISTING TARIFFS.

9. NEW AIR DRYERS, NITROGEN BOTTLES, LOAD COILS, ETC. SHALL NOT BE ATTACHED TO DUKE ENERGY POLES.

10. CLEARANCES FROM GROUND AND OTHER FACILITIES SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE NESC, OR THE REQUIREMENTS SHOWN IN THIS MANUAL, WHICHEVER IS GREATER. EXISTING INSTALLATIONS WHICH WERE IN COMPLIANCE WITH THE NESC AT THE TIME OF THEIR ORIGINAL CONSTRUCTION NEED NOT BE MODIFIED UNLESS SPECIFIED BY LATEST EDITION OF NESC CODE HANDBOOK OR DUKE ENERGY SPECIFICATIONS.

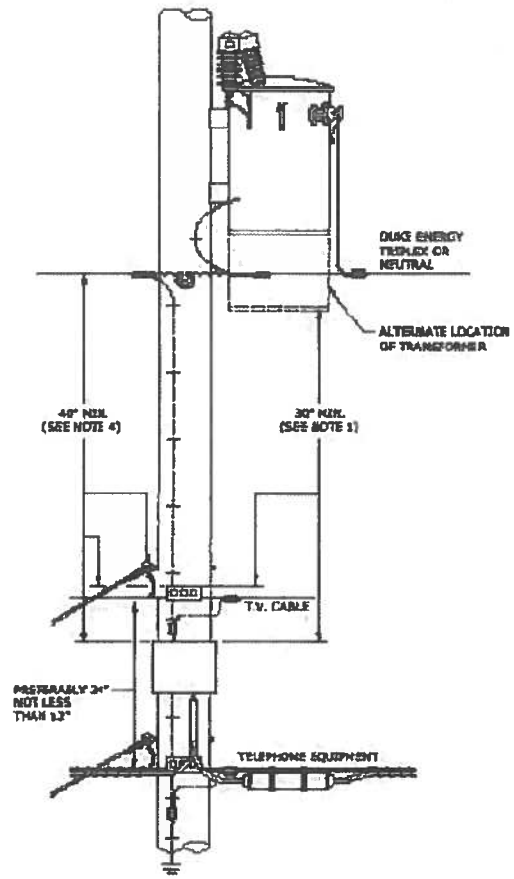
11. ATTACHMENT LOCATIONS MAY BE ASSIGNED BY DUKE ENERGY AT SPECIFIC HEIGHTS. UNDER NO CIRCUMSTANCES WILL PROPER CLEARANCES FROM DUKE ENERGY FACILITIES BE VIOLATED.

12. ALL ATTACHMENTS ON DUKE ENERGY POLES SHALL BE TAGGED IN ACCORDANCE WITH THE LATEST DUKE ENERGY REQUIREMENTS.

13. REQUESTS FOR EXCEPTIONS TO THIS DESIGN GUIDE SHALL BE REFERRED TO THE JOINT USE UNIT. ANY EXCEPTIONS APPROVED WILL BE DISTRIBUTED TO THE REGIONS FOR UNIFORM APPLICATION ON A SYSTEMWIDE BASIS.

DUKE ENERGY.

						DEC	DEM	DEP	DEF
3					JOINT USE ATTACHMENT AND CLEARANCES				
2									
1						X	X	X	X
0	[illegible]	[illegible]	[illegible]	[illegible]		10.07-03			
REVISED		BY	CK'D	APPR.					



NOTES:

1. THIS DIMENSION OF NOT LESS THAN 30" APPLIES BETWEEN CONDUCTORS AND NON-CURRENT CARRYING PARTS OF EQUIPMENT THAT ARE EFFECTIVELY GROUNDED.
2. MINIMUM DIMENSIONS APPLY TO UPPERMOST ATTACHMENT.
3. CLEARANCES BETWEEN POWER AND COMMUNICATION LINES AT THE POLE MUST BE INCREASED IF THE PROPER MIDSPAN CLEARANCES DESCRIBED ON DWG. 10.07-07 CANNOT BE MAINTAINED.
4. A 40" MINIMUM CLEARANCE IS REQUIRED BETWEEN CLOSEST METAL PARTS OF COMMUNICATION AND UNGROUNDED POWER EQUIPMENT.
5. THE CLEARANCES ON THIS DRAWING APPLY TO BOTH GROUNDED METALLIC COMMUNICATION CABLES AND DIELECTRIC FIBER OPTIC CABLES.
6. JOINT USER SHALL BOND MESSENGER WIRES TO GROUND WIRE PER NESC REQUIREMENTS.

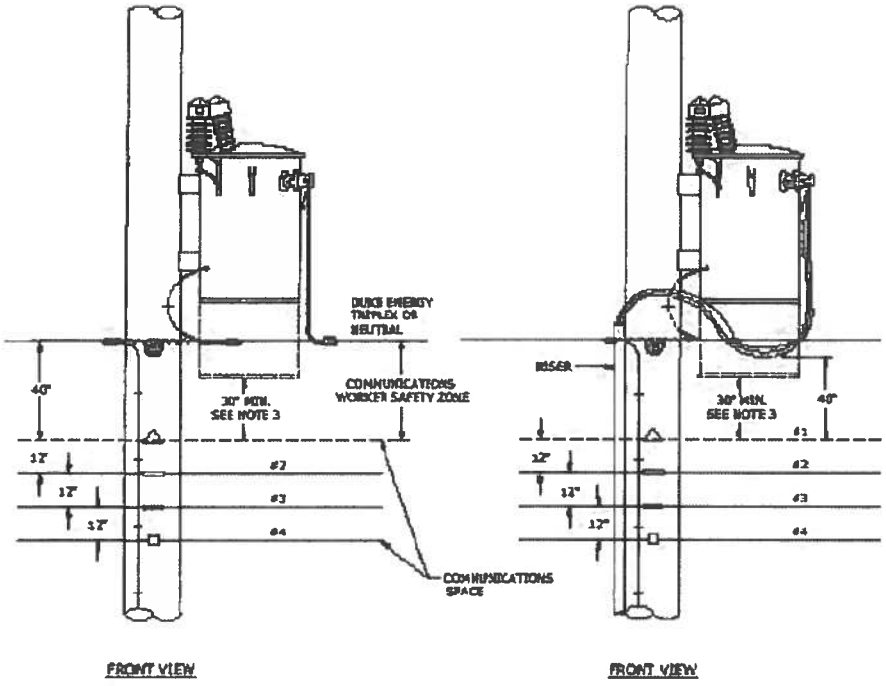
DUKE ENERGY.

REVISED	BY	CK'D	APPR.				
3							
2							
1							
0							

JOINT USE CONSTRUCTION CLEARANCES

DEC	DEM	DEP	DEF
X	X	X	X

10.07-05



MINIMUM CLEARANCES MIDSPAN (IN.)	
PRIMARY	30
NEUTRAL	12
SECONDARY	30
SERVICE DROP	12
SPAN GUY	12

NOTES:

1. DUKE ENERGY FIBER OPTIC CABLE LOCATED AT THE BOTTOM OF THE SUPPLY SPACE (i.e. LESS THAN 40" FROM POWER) MUST HAVE A MINIMUM CLEARANCE OF 40" BETWEEN THE FIBER OPTIC CABLE AND THE TOP COMMUNICATIONS CABLE TO ENSURE THE 40" COMMUNICATION WORKER SAFETY ZONE IS NOT VIOLATED.
2. CLEARANCES SHOWN FROM ELECTRICAL FACILITIES TO JOINT USE FACILITIES ARE MINIMUM CLEARANCES.
3. THIS DIMENSION OF NOT LESS THAN 30" APPLIES BETWEEN CONDUCTORS AND NON-CURRENT CARRYING PARTS OF EQUIPMENT THAT ARE EFFECTIVELY GROUNDED.

DUKE ENERGY.

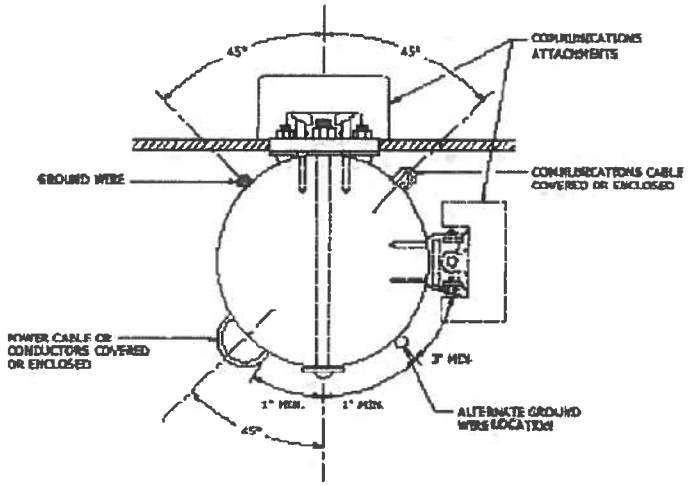
REVISED	BY	CK'D	APPR.
3			
2			
1			
0			

JOINT USE CONSTRUCTION CLEARANCES

DEC	DEM	DEP	DEF
X	X	X	X

10.07-07

LOCATION OF VERTICAL RUNS

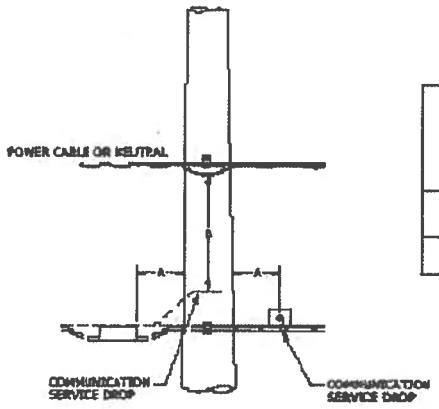


STREET SIDE

NOTES:

1. DO NOT LOCATE GROUNDED EQUIPMENT LESS THAN 1" FROM A BOLT OR STAPLE.
2. LOCATE U-GUARD ON SIDE OF POLE AWAY FROM TRAFFIC.

FOREIGN SERVICE DROPS



DIMENSION (LETTER)	NESC REQUIREMENT MINIMUM (IN.)	DUKE ENERGY PREFERRED MINIMUM (IN.)
A	ALLOWED ON POLE	12
B	40	40

DUKE ENERGY.

3					
2					
1					
0	[illegible]	[illegible]	[illegible]	[illegible]	
REVISED		BY	CK'D	APPR.	

LOCATION OF VERTICAL RUNS AND JOINT USE SERVICE DROPS

DEC	DEM	DEP	DEF
X	X	X	X

10.07-11

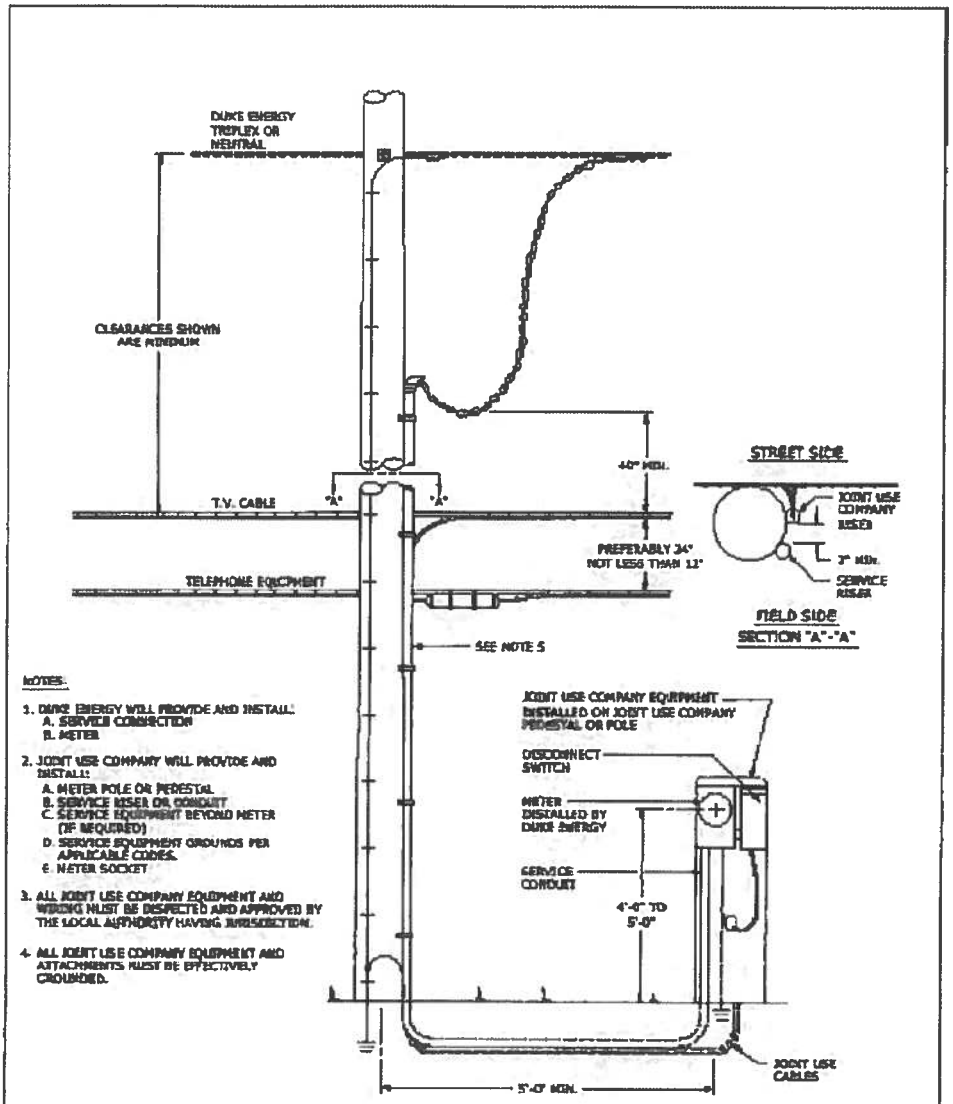


EXHIBIT E

[List Agreements to be Superseded]

Duke PROGRESS [redacted] Template FINAL

Adobe Sign Document History 01/04/2018

Created:	01/04/2018
By:	[redacted]
Status:	Signed
Transaction ID:	[redacted]

"Duke PROGRESS [redacted] Template FINAL" History

Document created by [redacted]
01/04/2018 - 12:53:35 PM EST- IP address: [redacted]

Document emailed to [redacted] for signature
01/04/2018 - 12:54:46 PM EST

Document viewed by [redacted]
01/04/2018 - 4:27:43 PM EST- IP address: [redacted]

Document e-signed by [redacted]
Signature Date: 01/04/2018 - 4:28:17 PM EST - Time Source: server- IP address: [redacted]

Signed document emailed to [redacted] and [redacted]
01/04/2018 - 4:28:17 PM EST

[redacted]

EXHIBIT A

Light Company ("FPL") in 1984 in the Line and Service department as a lineman. I held various positions over my 17 years at FPL that included Marketing Consultant, IT analyst, Service Planner, Recycling Coordinator and Supervisor of Investment Recovery.

3. I hold a Bachelor of Science Degree in Parks and Recreation from the University of Florida (1983), and I am a commissioned officer in the United States Navy Reserve.

4. DEP is an electric utility with a service area covering approximately 32,000 square miles in eastern North Carolina and northern South Carolina. In North Carolina, DEP's service area includes the densely populated areas around Asheville, Raleigh and Wilmington. In South Carolina, DEP's service area includes the densely populated areas around Florence and Myrtle Beach. Currently, DEP has joint use relationships with 14 incumbent local exchange carriers ("ILECs") and 34 pole license agreements with cable television systems ("CATVs") and non-ILEC telecommunications carriers. DEP's largest joint use relationships (in terms of the total number of jointly used poles) are with AT&T, CenturyLink, and Frontier, in that order. Excluding the ILECs, as of the date of this filing, there are approximately 480,481 third-party attachments (including CATVs, non-ILEC telecommunications carriers, and wireless companies) on DEP's distribution poles, system wide. 338,973 of those attachments (71%) are by CATVs.

DEP's Joint Use Agreement with AT&T

5. DEP has one joint use agreement with AT&T: the October 20, 2000 Amended and Restated Agreement Covering Joint Use of Poles between Carolina Power & Light Company (now DEP) and BellSouth Telecommunications, Inc. (now AT&T) (the "Joint Use Agreement"). The Joint Use Agreement replaced a previous agreement between those same parties: the September 29, 1977 Agreement Covering Joint Use of Poles Between Carolina Power & Light Company and Southern Bell Telephone and Telegraph Company (the "1977 JUA"). A true and correct copy of

the Joint Use Agreement is attached as Exhibit 1 to DEP's Answer. A true and correct copy of the 1977 JUA is attached as Exhibit 2 to DEP's Answer. Neither party has expressly terminated the Joint Use Agreement.

6. The parties share approximately 179,000 jointly used poles in their overlapping service areas, with DEP owning approximately 148,000 and AT&T owning approximately 31,000. The overlapping service areas are primarily in eastern North Carolina and northern South Carolina.

7. The purpose of the Joint Use Agreement is to share the use of each other's poles and to share the collective costs of the joint use network. In addition to cost sharing, the Joint Use Agreement minimizes the construction of redundant pole networks and improves the aesthetic appearance along roadways in the parties' overlapping service territory. Both the 1977 JUA and the current Joint Use Agreement explicitly identify a 40-foot pole as the "standard joint use pole." Specifically, the Joint Use Agreement defines "Standard Joint Use Poles" as "A 40-foot pole which meets the requirements of the Code for support and clearance of electric supply and communications conductors now or hereafter used by either party in the conduct of its business." Joint Use Agreement, Article I.K. This definition of a "standard joint use pole," which is common to DEP's other joint use agreements, is the reason DEP's standard distribution pole became a 40-foot wood pole.

8. Under both the 1977 JUA and the Joint Use Agreement, each party was required to share equitably in the cost of building and maintaining the jointly used network, either through pole ownership or through payment of an annual rate (calculated pursuant to Article XIII.C. of the Joint Use Agreement). The 1977 JUA stated "it is mutually agreed that [redacted] percent of the annual cost of joint use poles should be borne by the Electric Company and [redacted] percent should be borne by the Telephone Company." The 1977 JUA did not include any kind of "per pole" rate; rather, it

merely outlined the manner in which each party's share of the "annual cost of joint use poles" was to be calculated. The Joint Use Agreement brought simplicity to this concept and lowered AT&T's cost responsibility from [redacted]% to [redacted]% "because of changed conditions and experience gained." Under the "rate" methodology set forth in Article XIII.C. of the Joint Use Agreement, if AT&T owned approximately [redacted]% of the jointly used poles and DEP owned approximately [redacted]% of the jointly used poles, then neither party would make a net annual payment to the other.

AT&T's Utilization of DEP's Poles

9. Under the 1977 JUA, each party was allocated "standard space" for its "exclusive use." On 40-foot poles, DEP was allocated "[redacted] feet of space measured downward from a point six inches below the top of the pole" and AT&T was allocated the lowermost [redacted] feet. As explained in more detail below, DEP's current data indicates that the average height of AT&T's highest attachment on DEP's poles is at [redacted]. It would not be possible (on average) to locate another wireline communications attachment beneath AT&T given that: (1) AT&T was historically allocated the lowest portion of the usable space on a pole; (2) AT&T retained the right to occupy the lowest part of the communications space in the current Joint Use Agreement; (3) AT&T currently continues to occupy the lowest portion of the usable space on the pole; and (4) the lowest point of attachment is generally at 18 feet. For this reason, AT&T's attachments are occupying on average at least [redacted] feet. The average occupancy level might be better expressed as [redacted] feet in light of the fact that nobody can attach lower than [redacted] (on average) because of the 12" separation requirement between communications companies. Regardless of the number of attachments made by a party to the other party's poles under the Joint Use Agreement, and regardless of the amount of space a party actually occupies, the cost sharing obligations do not change.

Advantages of the Joint Use Agreement

10. The Joint Use Agreement differs from the "pole license agreements" that DEP enters into with CATVs, CLECs and other third parties that, unlike AT&T, do not own poles. Under such pole license agreements, the third party attacher merely rents space on DEP's poles if it is available. DEP does not build or replace its distribution poles, in the normal course, in anticipation of non-ILEC third party attachers like CATVs and CLECs because, to do so would be speculative (and there is little to gain financially given the regulatory limitations on the rental rates that can be charged to non-ILEC third parties like CATVs and CLECs). If space is not available, the third-party pays the entire cost necessary to create additional space, whether through make-ready or a pole change-out. The rental rate under a pole license agreement is typically a per attachment rate, rather than a per pole rate. For example, if a party to a pole license agreement has two attachments on a pole at a rate of $10 per attachment, the attacher would pay $20 for those two attachments.

11. AT&T has a number of advantages under the Joint Use Agreement that DEP's CATV and CLEC attachers do not have under their pole license agreements. First, DEP has built and maintained, and continues to build and maintain, poles of sufficient height and strength to accommodate AT&T without significant upfront capital cost to AT&T. Because of the Joint Use Agreement (and the preceding joint use agreements between the parties and their predecessors), DEP's network of distribution poles was built specifically to accommodate AT&T. DEP was able to justify spending more money on its network than necessary for the provision of electric service because AT&T was sharing in the cost of the network (either through pole ownership, payments to offset DEP's greater pole ownership, or both). For this reason, unlike DEP's CATV and CLEC attachers, AT&T paid very little in make-ready prior to attaching its facilities to DEP's poles. In

other words, because of joint use agreements, DEP constructed its pole infrastructure to be of sufficient height and strength to accommodate AT&T's facilities.

12. For example, both the 1977 JUA and the Joint Use Agreement contemplate a 40-foot joint use pole to accommodate electric and telephone facilities, plus the required separation space. If DEP had constructed its network in the absence of the Joint Use Agreement, DEP would have built a network only to suit its own service needs; thus, the pole network would have been built with shorter poles. Given that AT&T's allocated space was [redacted] feet in the 1977 JUA and the typical separation space is 40" (3.33 feet), and given that wood poles come in 5 foot increments, this means DEP, because of the Joint Use Agreement, was on average installing poles that were 5-10 feet taller than necessary to provide electric service. Use of such shorter poles would have translated to DEP incurring less expense, not only in terms of the upfront capital cost and the ongoing carrying costs of the poles, but also countless other costs such as, for example, the size and capability of bucket trucks. Thus, had AT&T simply entered into license agreements (akin to the DEP pole license agreements with CATVs and CLECs), AT&T likely would have been required to either (a) pay make-ready costs to replace nearly every DEP pole to which it is attached, or (b) construct an entirely redundant network of poles.

13. Second, AT&T occupies significantly more space on DEP poles than CATV and CLEC licensees. Under the 1977 JUA, AT&T was allocated the lowest [redacted] feet of space at "the point of attachment on the pole required to provide at all times the Code minimum clearance above ground." 1977 JUA at Article I.A.2. On average, AT&T's highest attachment on DEP poles is at [redacted] (measured at the pole). This average comes from field surveys performed on 1,039 DEP poles to which AT&T is attached. These surveys were performed during the 2019 and 2020 time period by DEP's contractor, TRC, as part of the third-party pole attachment process.

This figure includes all of the DEP poles to which AT&T is attached that were surveyed as part of the pole attachment process. None of the surveyed poles were excluded. Based on my own observations, my knowledge of DEP's system and my knowledge of AT&T's construction practices, I believe this average attachment height is either accurate or understated. In other words, if it is wrong, AT&T's actual average attachment height would be higher, not lower.

14. AT&T witness Mark Peters states, "AT&T installs light-weight copper and fiber optic cables that are comparable in size to the facilities of AT&T's competitors and occupy about the same amount of space across Duke Energy Progress' poles, which is presumed to be 1 foot of space." (Peters Affidavit at ¶ 24). This is incorrect. AT&T's lines are not like the tensioned messengers of CATVs and CLECs; they are often heavy bundles with significant sag. And, in any event, as set forth above, AT&T is occupying at least [redacted] feet of space, on average.

15. Despite what AT&T witness Peters says, AT&T's copper cables are not light, and in many cases, they are not small. In the larger sizes and bundles, AT&T's cables are among the largest, and heaviest, horizontally run cables on DEP's distribution poles. CATV and CLEC cables are significantly smaller, on average, than AT&T's lines. In addition, cable sags for AT&T's cables can be significant. DEP data indicates that the average midspan sag for AT&T attachments is [redacted] This cable sag must be added to the NESC-required minimum clearance above ground to determine AT&T's minimum point of attachment on the pole. Cable sag determines the point of attachment on a pole. As sag increases, so does the required height of attachment on the pole and therefore, the space utilized by the attachment.

16. Attached to my declaration as Exhibit A-1 are photographs taken of AT&T attachments to DEP poles in Rockingham, North Carolina. The first photo, titled Photo 9F8A8686-2, was taken along a fairly recently-relocated pole line located along U.S. 220 near

Northside Drive. The CATV is the highest communications attachment, and there is a single AT&T attachment below the CATV attachment. This photo illustrates the increased sag in AT&T's cable as compared to the CATV cable. The second two photos, titled Photo 9F8A8694-2 and Photo 9F8A8705-2, were taken near the intersection of South Hancock Street (U.S. Highway 1) and Valley Hill Drive. They show a CATV attachment in the highest position with two large AT&T cables with excess sag located below the CATV cable. These exemplar photos illustrate that AT&T's cables/bundles are larger in diameter and have greater sag than CATV (and CLEC) attachments.

17. In addition to the space actually occupied by AT&T's attachments, the communications worker safety zone (also known as the "safety space"), typically comprised of 40 inches (3.33 feet) of space between the top of the communication space and the bottom of the power supply space, must be attributed to AT&T's attachments on DEP's poles. The only reason the safety space existed on DEP's poles in the first place is because of the presence of AT&T on those poles. In the "but for" world in which AT&T did not enter into the Joint Use Agreement, there would have been no need for the safety space on DEP's poles, because there would have been no communications attachments, and thus no need to protect communications workers from electric lines. This space would not have been built into DEP's pole network in its overlapping service area with AT&T but for the joint use agreements. AT&T was almost always the first communications attachment on DEP's poles in the parties' overlapping service territories. AT&T was thus the initial cost-causer of the safety space.

18. DEP does not need and does not use safety space on its own poles. The safety space on DEP poles serves no purpose in the provision of electric service—it exists only to benefit attaching entities within the communications space. Though streetlights are occasionally mounted

within the safety space on DEP's poles, the safety space is not necessary for the proper installation of a streetlight. Streetlights can be, and often are, safely mounted within the electric supply space on DEP's poles. In other words, if there is not safety space on a distribution pole, DEP can still safely install a streetlight on that pole within the electric supply space. The safety space is not necessary for proper installation of a streetlight. Further, transformers are not mounted in the safety space. The presence of a transformer may change the **location** of the safety space, and even reduce the safety space from 40" to 30" in certain circumstance, but the transformer is never within the safety space. Finally, the presence of vertical shielded conductors cannot be considered the utilization of space unless communications risers running from the ground up the pole to the communications space (or even to pole top small cell attachments) are also considered to constitute the use of space on the pole. In any event, the number of distribution poles with vertical shielded electric conductors running through the safety space is limited.

19. Third, AT&T enjoys the lowest position on DEP's poles. Under the 1977 JUA, AT&T was allocated the lowest [redacted] feet of space at "the point of attachment on the pole required to provide at all times the Code minimum clearance above ground." 1977 JUA at Article I.A.2. On average, AT&T's highest attachment on DEP poles is at [redacted] measured at the pole. Occupying the lowest position in the communications space provides numerous operational advantages to AT&T. For example, occupying the lowest position on the pole gives AT&T ease of access to its attachments, as there is no need to work through the lines of other attaching entities. Further, occupying the lowest position gives AT&T the ability to sag cable more than CATVs and CLECs because there is never another wireline attachment beneath them. It also gives AT&T the ability to transfer its facilities to new poles for maintenance projects and operational upgrades faster and more easily than higher-mounted communications attachments. Nevertheless, AT&T

argues in its Complaint that being the lowest on the pole is not a favorable position. However, until this dispute, not once in my nearly 17 years as the manager of the joint use department for Progress Energy and Duke Energy has AT&T ever asked to renegotiate the Joint Use Agreement in order for AT&T to assume a higher position on the pole, or to avoid what it now contends to be an "unfavorable" location.

20. Fourth, AT&T enjoys a material benefit vis-à-vis its competitors with respect to the DEP permitting process. Unlike DEP's CATV and CLEC licensees, AT&T is not required to submit a permit when making a new attachment. CATV and CLEC licensees must submit an application to attach to DEP's poles, pay the costs associated with that application incurred by DEP, including inspection costs, and wait for their application to be processed in accordance with FCC timelines prior to attaching. AT&T, on the other hand, can attach without submitting a permit to DEP, without paying the costs associated with such an application, and without waiting any period of time for DEP to perform each of the steps in the permitting process (including review of the application, survey, make-ready engineering) and to approve, conditionally approve subject to make-ready requirements, or deny AT&T's application.

21. Further, while DEP performs the same post-construction inspections with respect to AT&T's attachments as it performs for CATV and CLEC permit applications, AT&T (unlike CATVs and CLECs) is not charged for that work. The current permitting, engineering and inspection costs for CATV and CLEC licensees in DEP's service area are set forth in Exhibit A-2 attached hereto. As shown on Exhibit A-2, some of these costs are on a "per permit" rather than a "per attachment" basis. Based on 2015-2020 data, the average number of poles per permit was 12. Also, some of the charges do not apply to every attachment, like the structural analysis fee and the second/subsequent post-inspection fee. On average, those fees apply to approximately 10% of the

poles. The fees for second/subsequent post-inspection are the only fees that are hourly, as opposed to unit based. Our contractors, on average, can perform four second/subsequent post-inspections per hour.

22. Fifth, AT&T enjoys a perpetual license under the Joint Use Agreement to remain attached to DEP's poles even after default or voluntary termination of the Joint Use Agreement. Article XVII.B. of the Joint Use Agreement provides:

> Any such termination of the right to make additional Attachments shall not, however, abrogate or terminate the right of either party to maintain the existing Attachments on the poles of the other and all such existing Attachments shall continue pursuant to and in accordance with the terms of this Agreement.

In addition, Article XIV.A. provides:

> If either party defaults in any of its obligations under this Agreement and such default continues for thirty (30) days after receipt of written notice from the other party all rights of the party in default hereunder shall be suspended, including its right to occupy additional Jointly Used poles, and if such default continues for a period of thirty (30) days after such suspension, the other party may refuse to grant further Joint Use.

This is contractual right that DEP's CATV and CLEC licensees do not have. When DEP terminates a pole license agreement with a CATV or CLEC, DEP's pole license agreements require such entities to remove their attachments from DEP's poles within 60-180 days (depending upon the agreement). In contrast, under the Joint Use Agreement, even after termination, AT&T's existing attachments can remain attached to DEP's poles under the same terms and conditions as set forth in the Joint Use Agreement in perpetuity.

23. A sixth benefit AT&T enjoys under the Joint Use Agreement is paying for make-ready based on scheduled (a/k/a "tabulated") costs as opposed to work order costs. The scheduled costs set forth in Exhibit B to the Joint Use Agreement are significantly less than actual work order costs. Article VII of the Joint Use Agreement addresses how and when the Exhibit B scheduled

costs come into play. There are two provisions in particular that illustrate the advantages of scheduled costs as compared to the actual work order costs paid by CATV and CLEC licensees under similar circumstances. First, Article VII.F.4. provides as follows:

> If the existing pole is adequate to support the existing Attachments of both parties and the Licensee requires additional height, the Licensee shall pay the Owner the cost as shown in Table I of Exhibit B and computed based on the size of the pole installed.

Second, Article VII.F.6.b. (addressing cost responsibility when an existing pole is inadequate to support existing Attachments) provides as follows:

> If the problem exists because the Licensee's facilities are not installed to meet the Code requirements, the pole shall be replaced and the Licensee shall pay the Owner the full cost as shown in Table I of Exhibit B and computed based on the size of the pole installed.

24. Thus, if AT&T needs DEP to replace an existing 40-foot pole with a 45-foot pole—either because it needs more space for additional facilities or because it has caused a violation—then AT&T's cost responsibility is limited to the amount set forth in Table I of Exhibit B. The current value in Table I of Exhibit B for any pole 50 foot or less is $[redacted]. *See* Exhibit 5 to DEP's Answer. In contrast, if the same need arises for one of DEP's CATV or CLEC licensees, the CATV or CLEC licensee would be required to pay actual work order cost. In 2019, the average cost of a pole replacement for DEP was $[redacted]. This means that, on average AT&T gets a $[redacted] discount as compared to CATV and CLEC licensees for the same work.

25. In addition to the cost savings described above, DEP also replaces many AT&T-owned poles on AT&T's behalf. This is referred to as "set and sell." AT&T reimburses DEP for this work per Table IV of Exhibit B. The current value in Table IV of Exhibit B for any pole 50 foot or less is $[redacted]. The actual cost of this work would be more in line with DEP's average replacement cost for 2019 of $[redacted], for a cost savings to AT&T of $[redacted] per pole. The

number of poles DEP replaces for AT&T varies from year to year, but between 2009-2017, DEP replaced [redacted] defective AT&T poles discovered through inspection programs. This represents a cost savings to AT&T of approximately $[redacted] million and represents an actual cost to DEP in a corresponding amount.

26. DEP would never have negotiated the Joint Use Agreement to include all of the aforementioned terms and conditions if the most DEP could recover from AT&T in return was the one-foot CATV or telecom rate (old or new). Further, DEP would never have agreed to give AT&T the right to remain attached to DEP's poles even in the event of a termination.

Dispute History

27. Since I began working at Progress Energy, AT&T never complained to DEP that the cost-sharing arrangement in the joint use agreement was unfair, unreasonable, unjust, inaccurate, outdated, or otherwise in need of revision until May 22, 2019. Further, we have reviewed correspondence files and found no indication of any sort of objection or complaint by AT&T. In each year placed at issue in AT&T's complaint through 2018 (and for many years prior), AT&T actually certified the correctness of both the number of poles invoiced and the applicable rates. The way this process worked is as follows: (1) DEP sent the annual updated rates (per Handy Whitman adjustment, as set forth in Article XIII.C. of the Joint Use Agreement) to AT&T for review; (2) AT&T reviewed the updated rates and then prepared what it calls a "Form 6407," which certified the accuracy of the calculations and the correct number of poles owned by each party for billing purposes; (3) AT&T executed the Form 6407 and returned it to DEP for execution (these forms for 2016-2018 are attached hereto as Exhibit A-3); (4) after receiving the Form 6407 from AT&T, DEP sent the invoice for annual rentals. This exchange of information served as the basis for annual billing for many years until 2019.

28. AT&T first challenged the cost sharing methodology in the existing joint use agreement on May 22, 2019. On that date, I received a request from Dianne Miller of AT&T to renegotiate the joint use rates in the Joint Use Agreement. A copy of that letter was attached to AT&T's complaint.

29. On July 26, 2019, representatives from AT&T and Duke Energy met in Raleigh, North Carolina. I attended the meeting on behalf of Duke Energy, along with David Hatcher, Managing Director. Dianne Miller was accompanied by Mark Peters and Dan Rhinehart of AT&T. Although no resolution was reached in the July meeting, the parties agreed to meet again on October 24, 2019. During the October meeting, the parties were unable to agree to any new joint use rates under the Joint Use Agreement.

30. In its complaint, AT&T makes a number of statements regarding the parties' July and October 2019 meetings that are inaccurate based upon my recollection of those meetings. First, AT&T argues:

> With respect to make-ready, the executives said AT&T may be advantaged if it pays for make-ready performed by a Duke company based on a cost schedule containing pre-set cost estimates (i.e., standardized costs) instead of based on a per-project cost estimate (i.e., costs specific to a project). But *Duke Energy Progress* determines the pre-set cost estimates and updates them regularly, including earlier this year. There should be no cost difference between the two approaches and Duke Energy Progress never documented the existence of any difference.

Complaint at ¶ 17. During the July 2019 and October 2019 meetings, DEP explained the dramatic financial benefit that AT&T enjoys by paying tabulated, as opposed to actual, costs (as explained in Paragraphs 23-24 above).

31. AT&T also alleges that scheduled costs should not differ from actual costs because DEP "unilaterally sets" the scheduled costs and "updated them regularly." While it is true that there are annual updates to Exhibits B, C and D to the joint use agreement to address changes in

tabulated costs (which benefit AT&T through drastically lower-than-actual and predictable pricing for modifications), as explained in Article VII.K.1:

> Exhibit B revisions are based on the percentage change as shown in Handy Whitman Index and computed by comparing the present year July figure for FERC account 364 to the previous year July figure for FERC account 364. This percentage change will be applied to the costs as shown in the then current Exhibit B.

32. Additionally, with respect to the issue of make-ready costs raised at the parties' meetings, AT&T argues that "A&T also reduces the amount of make-ready work it requires Duke Energy Progress to perform by AT&T completing much of its own make-ready and engineering work itself...." AT&T Complaint at ¶ 17. It is unclear to me what AT&T means by this statement. However, I can state unequivocally that if electric supply space make-ready or pole replacements within energized lines are required to accommodate AT&T's modification or expansion of facilities, DEP performs that work. And, unlike DEP's CATV and CLEC licensees, AT&T does not reimburse DEP when DEP transfers or rearranges its electric supply facilities to accommodate AT&T.

33. Second, AT&T states that during the parties' meetings, Duke Energy representatives argued that one of the benefits of the Joint Use Agreement is that DEP replaces AT&T poles following an emergency. AT&T argues that "Because AT&T pays Duke Energy Progress for the cost of these pole replacements, there is no financial benefit to AT&T and no cost to Duke Energy Progress." Complaint at ¶ 20. But as DEP explained during the July 26, 2019 and October 24, 2019 meetings, the benefit to AT&T is that AT&T is able to get this work completed in a timely manner without the cost of carrying crews, equipment, inventory, dispatchers, engineers and all of the other things necessary to replacing a pole in the middle of the night on a moment's notice. Further, as set forth in paragraphs 23-24 above, AT&T pays scheduled

costs for this work rather than actual work order costs which results is massive costs savings to AT&T.

Average Number of Attaching Entities

34. Another piece of information that we shared with AT&T during one of the meetings was that the average number of attaching entities on DEP poles to which AT&T is attached is [redacted]. This average is based on survey data collected by VentureSum, our contractor, during a 2017 survey of all DEP poles. The data was provided to us in a way that allows us to sort only those poles to which AT&T is attached. For this reason, the [redacted] average reflects only those poles to which AT&T is also attached. The [redacted] average includes DEP as an attaching entity. In other words, there are on average [redacted] entities other than DEP attached to those DEP poles to which AT&T is attached.

Pole Replacement and Pole Construction Costs

35. In connection with their investigation and analysis, I gathered and provided a number of pieces of data to the Kenrich Group upon their request. One of the pieces of data was the average wood pole replacement cost for the year ending 2019. That figure is $[redacted] per pole (as referenced above in paragraph 24). I obtained this information in the normal course of business from our plant accounting department. This replacement cost figure would be akin to the current cost of a make-ready pole replacement. This average is based on 3,586 wood pole replacements in 2019.

36. Another data set that I provided to Kenrich Group, per their request, related to the cost of constructing new pole lines (as opposed to pole replacements) within DEP's service area. The specific data points that I provided are listed in the table below:

	30C6	35C5	40C5	45C4	50C3
Single Phase Tangent	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
Three/Two Phase Tangent	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]
Secondary	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]	$ [redacted]

The numbers in the top row identify pole height and class. So, for example, "30C6" means a 30-foot Class 6 pole. The column on the far left indicates the most common construction types within the distribution system. Based on data obtained from our GIS department, DEP's distribution system is approximately [redacted]% single phase, [redacted]% three/two phase and [redacted]% secondary. I asked our engineering firm to provide work order cost estimates for each of these construction types on the above-listed types of poles, and the information provided is set forth above. The work order system used to generate these costs is the same work order system DEP uses for all other purposes. Tangent construction is generally the simplest form of construction and thus yields the lowest costs. By way of example, a three phase dead-end double circuit pole with switch gear and a primary riser would be more than double the three phase tangent cost set forth above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on the 13th day of November, 2020.

Gilbert Scott Freeburn

EXHIBIT A-1

PUBLIC VERSION
Photo 9F8A8686-2

PUBLIC VERSION
Photo 9F8A8694-2

PUBLIC VERSION

Photo 9F8A8705-2

EXHIBIT A-2
(Confidential – Withheld from Public Version)

EXHIBIT A-3
(Confidential – Withheld from Public Version)

EXHIBIT B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina,	)	
Complainant,	)	**Proceeding No.: 20-293**
v.	)	**Bureau ID No.: EB-20-MD-004**
DUKE ENERGY PROGRESS, LLC,	)	
Defendant.	)	

DECLARATION OF DAVID J. HATCHER

1. My name is David J. Hatcher. I currently serve as the Managing Director, Smart City Solutions, for Duke Energy Corporation (the parent corporation of Duke Energy Progress, LLC ("DEP")). My current responsibilities as Managing Director, Smart City Solutions include director-level oversight of pretty much all third-party utilization of Duke Energy infrastructure. This includes things like traditional joint use and pole attachments, as well as streetlight small cell collocation, tower leasing, and other smart service attachments. I also currently oversee Duke Energy's lighting program, which not only provides street and outdoor area lighting to customers within Duke Energy's footprint, but also works with wireless carriers and infrastructure providers on innovative solutions for streetlight collocation. The managers of joint use (Scott Freeburn), lighting and tower leasing for Duke Energy all report to me in my current role. I have been in my current role for approximately three years.

2. I received a B.S. in Industrial Management with a minor in Electric Engineering from Purdue University in 1988. After graduating from Purdue, I worked for Owens-Illinois in

plastics manufacturing as a production supervisor. In 1992, I received a Master of Business Administration degree from the University of North Carolina at Chapel Hill. Between 1992 and when I joined Carolina Power & Light (predecessor in interest to DEP) in 1998, I worked in electronics manufacturing for Emco Electronics as Production Manager and then as Operations Manager.

3. I have been employed by Duke Energy and/or its predecessors since 1998 through the present and have held various strategy, finance, and operations roles during my career at Duke Energy.

4. DEP is party to an October 20, 2000 joint use agreement between Carolina Power & Light Company (now DEP) and BellSouth Telecommunications, Inc. (now AT&T) (the "Joint Use Agreement"). The Joint Use Agreement replaced a previous agreement between the same parties: the September 29, 1977 Agreement Covering Joint Use of Poles Between Carolina Power & Light Company and Southern Bell Telephone and Telegraph Company (the "1977 JUA").

5. DEP's predecessor in interest entered into the 1977 JUA, and DEP entered into the Joint Use Agreement, in order to partner with AT&T to share in the costs of the joint use network so that each party could provide ubiquitous electric and telephone service, respectively, across their overlapping service territories at lower cost to their respective customers. By partnering in this way, the parties avoided construction of redundant pole networks that would have been more expensive than a shared network, and that would have burdened the right of way with unsightly duplicative pole lines.

6. The key aspect of these agreements was that each party would share equitably in the cost of building and maintaining the jointly used network, either through pole ownership or through payment of an annual rate (currently calculated pursuant to Article XIII.C. of the Joint

Use Agreement). The 1977 JUA stated "it is mutually agreed that [redacted] percent of the annual cost of joint use poles should be borne by the Electric Company and [redacted] percent should be borne by the Telephone Company." The 1977 JUA did not include any kind of "per pole" rate; rather, it merely outlined the manner in which each party's share of the "annual cost of joint use poles" was to be calculated.

7. The Joint Use Agreement brought simplicity to this concept and lowered AT&T's joint use pole network cost responsibility from [redacted]% to [redacted]% "because of changed conditions and experience gained." Under the "rate" methodology set forth in Article XIII.C. of the Joint Use Agreement, if AT&T owned approximately [redacted]% of the jointly used poles and DEP owned approximately [redacted]% of the jointly used poles, then neither party would make a net annual payment to the other. The Joint Use Agreement was, and remains, a crucial component of DEP's business plan to provide affordable electric service to its customers because DEP would not have built the distribution pole network the way that it built it in the absence of our partnership with AT&T.

8. Both the 1977 JUA and the Joint Use Agreement explicitly identify a 40-foot pole as the "standard joint use pole". It is because of the these agreements that DEP and its predecessors began building a network of primarily 40-foot, Class 5 poles in its overlapping service area with AT&T, and it is because of these agreements that DEP has always installed (and continues to install) poles taller and stronger than would have been necessary to meet DEP's service needs alone. DEP would not have installed taller and stronger poles than necessary to meet its own service obligations but for the joint use agreements (and their infrastructure cost sharing provisions), because DEP could not have justified the additional investment without those agreements (and their cost sharing provisions). In other words, in the absence of the partnership with AT&T, DEP would not have "speculatively" built a network of poles taller and stronger than

necessary to meet its core business purposes because there would have been no guarantee that any entities would come along to share in the cost of the excess capacity, and such a gamble would have thus been unacceptable to DEP from a business perspective (not to mention prudency questions related to our state regulators—the North Carolina Utilities Commission ("NCUC") and the South Carolina Public Service Commission ("SCPSC")). The reason the investment in taller and stronger infrastructure makes sense (and the reason it is justifiable from a NCUC/SCPSC prudency perspective) is **because of** the cost sharing obligations in the Joint Use Agreement.

9. One of the reasons that DEP (and its predecessors in interest) initially set 40 foot poles in order to accommodate AT&T is that, in addition to the actual space occupied by AT&T attachments (the 1977 JUA allocated AT&T [redacted] feet of space per pole for its exclusive use), the poles had to include a 40 inch (3.33 foot) communication worker safety zone (sometimes also called the "safety space"). The sole purpose of the safety space is to provide a buffer between DEP's energized facilities in the power supply space and communications employees/contractors constructing attachments in the communications space. But for AT&T's attachments on the pole, which were almost always the first communications attachments on the poles (and remain the only communications attachments on many joint use poles), the safety space would not have been necessary and would not have existed on DEP's poles. The safety space on DEP poles serves no purpose whatsoever in the provision of electric service. DEP has always needed to set a pole 5-10 feet taller than necessary for electric service in order to accommodate AT&T's facilities and the safety space.

10. Prior to May 22, 2019, I am not aware of AT&T ever complaining to DEP or its predecessors that the cost-sharing arrangement in the Joint Use Agreement was unfair, unreasonable, unjust, inaccurate, outdated, or otherwise in need of revision. However, Scott

Freeburn, Duke Energy's Joint Use Manager, received a letter dated May 22, 2019 from Dianne Miller of AT&T requesting to renegotiate the Joint Use Agreement's annual recurring rates. The parties subsequently engaged in two meetings in response to AT&T's request: a July 26, 2019 meeting and an October 24, 2019 meeting. I was present and participated in both of those meetings.

11. In both the July 26 and October 24, 2019 face-to-face meetings between representatives of the parties, DEP explained its perspective relating to the advantages AT&T enjoys under the Joint Use Agreement as compared to CATV and CLEC licensees, including but not limited to the following:

- the amount of space AT&T actually occupies on DEP's poles (feet), as compared to the one-foot of space allocated to DEP's CATV and CLEC licensees;
- the make-ready costs AT&T avoided through DEP's construction of a built-to-suit network of poles with sufficient capacity to accommodate AT&T's attachments, as compared DEP's CATV and CLEC licensees who take the pole as they find it;
- the tabulated costs that AT&T pays under the Joint Use Agreement (Exhibit B), as compared to the actual work order costs paid by DEP's CATV and CLEC licensees;
- the fact that AT&T is not required to go through DEP's permitting process (with its attendant costs) prior to attaching to DEP poles, unlike CATVs and CLECs; and
- the perpetual license enjoyed by AT&T even in the event of a termination for convenience (per Article XVII.B. of the Joint Use Agreement) or Default (per Article XIV.A.), as compared with the removal-upon-termination provisions in DEP's CATV and CLEC license agreements.

12. The advantages set forth above are not advantages enjoyed by DEP's CATV and CLEC licensees. DEP explained these benefits of the Joint Use Agreement in the parties' meetings in terms of substance, if not by specific section number, and explained how those provisions compared to the analogous provisions of pole license agreements DEP enters into with CATVs and CLECs.

13. Though DEP had not, at the time of the parties' July 26, 2019 and October 24, 2019 meetings, performed any sort of precise economic quantification of those competitive advantages, DEP made clear to AT&T that it would do so if the parties were unable to reach an amicable resolution. When DEP explained the types of "net benefits" it would quantify if required to do so, AT&T merely dismissed them with talking points about the "reciprocal" nature of those benefits. DEP never disputed that those benefits were, indeed, reciprocal; rather, DEP explained that those "reciprocal" benefits disproportionately inure to the benefit of AT&T under the particular relationship at issue here because DEP owns a disproportionally large percentage of the poles in the joint use network.

14. In an affidavit submitted with AT&T's Complaint, Mark Peters, AT&T's Area Manager-Regulatory Relations, attempts to dismiss the above-stated benefits of the Joint Use Agreement identified by DEP in the parties' July 26, 2019 and October 24, 2019 meetings. First, Mr. Peters states that the Joint Use Agreement does not state that any particular amount of space is reserved for AT&T, and that AT&T installs light-weight copper and fiber optic cable that is of comparable size to the facilities of AT&T's competitors, which the FCC presumes to occupy one foot. Peters Aff. at ¶ 24. However, the 1977 JUA allocated [redacted] feet of space on DEP poles to the "exclusive use" of AT&T. Further, the field data rebuts Mr. Peter's allegation that AT&T only occupies one foot of space. That field data indicates that AT&T in fact occupies, on average, at least [redacted] feet of space on DEP's poles (excluding any portion of the safety space). We shared this fact with AT&T at one or both of the meetings. Neither Mr. Peters nor anyone else at AT&T ever provided any data indicating otherwise.

15. Further, Mr. Peters argues that AT&T's avoidance of make-ready costs resulting from the 40-foot poles contemplated by the Joint Use Agreement is not a material advantage vis-

à-vis AT&T's competitors because, "By definition, when AT&T and its competitors attach to the same Duke Energy Progress pole, the pole is tall enough to accommodate multiple communications attachments...." Peters Aff. at ¶ 12. This argument is off-base for several reasons. First, even if AT&T's competitors were occasional incidental beneficiaries of the Joint Use Agreement, it takes nothing away from the fact that the taller poles were built for, and because of, AT&T. They were not built for, or because of, AT&T's competitors. AT&T almost never had to perform make-ready when deploying its attachments on DEP's poles because the poles were built to suit AT&T in the first place. By way of contrast, subsequent third party attachers (whom AT&T repeatedly describes as its competitors, even though this was only the case much later in time) took the pole as they found it. If there happened to be sufficient capacity for the new attacher to attach, it could proceed. However, where there was insufficient clearance or loading capacity, the new attacher was required to pay for make-ready and/or pole changeouts in order to accommodate their attachments. These significant make-ready costs were wholly avoided by AT&T as a result of the joint use partnership. If, in an alternate universe, a CATV or CLEC with a pole license agreement had been the first communications company to make attachments to DEP's poles, the CATV or CLEC attacher would have been required to pay for change-outs of virtually every pole. A network of poles built solely to meet DEP's electric service needs would not have had sufficient space for a communications attachment and the communication worker safety zone that is required when electric and communication facilities share the same pole.

16. In addition, Mr. Peters' affidavit neglects the most significant benefit of the Joint Use Agreement—that AT&T may remain attached to DEP's poles following termination of the Joint Use Agreement (for convenience or default), and in such instance each party's existing attachments on the other party's poles are subject to the same rates, terms, and conditions contained

in the terminated agreement. Rather than addressing this issue head-on, Mr. Peters instead argues that AT&T is disadvantaged by a lack of statutory access to DEP's poles and that "the Carolinas JUA gives Duke Energy Progress the right to exclude poles from joint use *and* the right to terminate AT&T's ability to attach to new pole lines at any time and for any reason." Peters Aff. at ¶ 25. The fact that AT&T lacks a statutory mandatory access right to access DEP poles not currently in joint use is irrelevant to the fact that AT&T, unlike its competitors, has the right to maintain its existing attachments on DEP's poles in perpetuity under the Joint Use Agreement. None of DEP's CATV or CLEC licensees have such a contractual right in their pole license agreements.

17. Further, DEP made clear at the July 26, 2019 and October 24, 2019 meetings that DEP was more than willing to grant AT&T access on a going-forward basis (*i.e.* to DEP poles not already in joint use) on the exact same terms and conditions as DEP's CATV and CLEC licensees. In the July 26, 2019 meeting, DEP proposed that AT&T enter into a new pole license agreement (at the Commission's new telecom rate) that would cover poles that are not already in joint use. AT&T indicated that it had no interest in this proposal.

18. During the July 26, 2019 and October 2019 meetings, we also discussed the proper allocation of the cost of the safety space. We explained to the AT&T representatives that this is space that DEP does not need and does not use on its own poles. We acknowledged that, on AT&T poles, AT&T likewise would not need the safety space without DEP's electric facilities. We thus discussed the possibility of AT&T bearing the cost of the safety space on DEP's joint use poles, and DEP bearing the cost of the safety space on AT&T's joint use poles. AT&T's response to this issue was obtuse, to say the least. Rather than engaging in a conversation about whether and why it made sense for DEP to absorb the cost of safety space on its own poles (when it does not need

and does not use this space), AT&T took the position that none of that mattered because, from its perspective, the FCC had already said that the safety space was excluded from the CATV and CLEC rate formula. We further explained that the FCC authority upon which AT&T was relying seemed to presume that the cost of safety space was already covered under existing joint use agreements and that it made no sense to rely on those authorities when AT&T was seeking to unravel the very premise upon which those authorities were based. We also explained that, though it would certainly make more sense for all communications attachers to share the cost of the safety space equally, the fact that the FCC has excused CATV and CLEC attachers from sharing in this burden meant that the cost necessarily fell on either AT&T or DEP; and given that DEP doesn't need the safety space on its own poles, it only made sense for AT&T to pay for it. Though AT&T said they would "look into it," they never re-engaged on this important issue. To the contrary, all of the "models" proposed by AT&T involved DEP bearing the entire cost of the safety space both on DEP-owned poles and AT&T-owned poles. From a ratemaking, logical and fairness perspective, this was a nonstarter.

19. AT&T has also submitted with its Complaint an affidavit by Dianne Miller, Director—Construction & Engineering for AT&T, containing an inaccurate characterization of the parties' executive level meetings. In her affidavit, Dianne Miller states that during the parties' October 24, 2020 meeting, "...executives for the Duke companies informed us that they would not entertain a reduction of rental rates for AT&T's existing pole attachments, would not consider refunding any of AT&T's past overpayments, and considered the parties too far apart to make an offer." Miller Aff. at ¶ 15. As set forth above, we made clear that we were willing to enter into a new agreement to cover new poles on terms and conditions identical to our CATV and CLEC licensees. Further, we were obviously willing to discuss a new cost-sharing methodology even for

existing joint use poles—that was the whole point of the conversation about the proper allocation of the cost of the communication worker safety zone. In fact, during those meetings, Duke explored with AT&T concepts similar to those embodied in the September 10, 2020 settlement offer we ultimately transmitted to AT&T. However, AT&T argued in the 2019 meetings that it was entitled to DEP's current one-foot telecom rate with, at the most, [redacted] feet of allocated space. AT&T made clear that it did not intend to compromise on that position. DEP indicated that, in that case, the parties were likely too far apart on methodology for further productive negotiations at the time, and AT&T agreed. AT&T also discussed interest in retroactive refunds, even though it had not raised any sort of dispute about the agreement until May 22, 2019. DEP made clear that retroactive refunds were a non-starter.

20. In any event, and perhaps more importantly, DEP has, in fact, provided AT&T with a settlement offer that DEP believes [redacted]. On September 10, 2020, DEP transmitted by letter an adjusted cost sharing proposal to AT&T (which would apply to both DEP and Duke Energy Florida, LLC) that utilizes the FCC's old telecom rate formula and, if accepted, would result in [redacted] over the life of the proposed deal. As of the date of my execution of this declaration, AT&T has not responded to the proposal. In fact, to my knowledge, AT&T has not even indicated one way or another that they intend to respond.

21. AT&T's efforts to undermine the partnership between the parties is detrimental to broadband deployment. The partnership with AT&T was successful in allowing AT&T to deploy ubiquitous telephone and other services to their respective customers throughout DEP's service area. When AT&T adds fiber to existing joint use poles, it doesn't have to go through the permitting process, and it pays no additional "rental" for the additional burden on the pole. Nevertheless, AT&T seeks to characterize the Joint Use Agreement as a vestige of the past, rather

than recognizing that the same infrastructure and cost sharing arrangements embodied in the Joint Use Agreement can and should be harnessed to provide broadband and other network solutions to rural and urban America. By way of example only, if DEP had agreements in place that could economically justify building additional space into the top of its distribution poles (kind of like when DEP built additional capacity beneath its electric facilities for AT&T) when those poles are built or replaced, wireless providers could rapidly deploy small cells and other advanced communications capabilities in the same way that AT&T deployed, and continues to deploy, its wireline facilities—without make-ready and without wait. But instead, in seeking to undermine the Joint Use Agreement, AT&T is undermining the potential for the joint use network to do what so far has proved an elusive task: to actually deploy wireline broadband to places that don't already have it. If AT&T were serious about being a contributor to the FCC's broadband deployment goals, it would be running towards the Joint Use Agreement—not running away from it.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on the 13th day of November, 2020.

David J. Hatcher